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DURING

THE MIDDLE AGES.

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VIEW

OF THE

STATE OF EUROPE

DURING THE MIDDLE AGES.

BY

HENRY HALLAM.

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PREFACE.

It is the object of the present work to exhibit, in a series of historical dissertations, a comprehensive survey of the chief circumstances that can interest a philosophical inquirer during the period usually denominated the Middle Ages. Such an undertaking must necessarily fall under the class of historical abridgments : yet there will perhaps be found enough to distinguish it from such as have already appeared. Many considerable portions of time, especially before the twelfth century, may justly be deemed so barren of events worthy of remembrance, that a single sentence or paragraph is often sufficient to give the character of entire generations, and of long dynasties of obscure kings.

Non ragioniam di lor, ma guarda e passa.

And even in the more pleasing and instructive parts of this middle period, it has been my object to avoid the dry composition of annals, and aiming, with what spirit and freedom I could, at a just outline rather than a miniature, to suppress all events that did not appear essentially concatenated with others, or illustrative of important conclusions. But as the modes of government and constitutional laws which prevailed in various countries of Europe, and especially in England, seemed to have been less fully dwelt upon in former works of this description than military or civil transactions, while they were deserving of far more attention, I have taken pains to give a true representation of them, and in every instance to point out the sources from which the reader may derive more complete and original information.

Nothing can be farther from my wishes than that the following pages should be judged according to the critical laws of historical composition. Tried in such a balance they would be eminently defective. The limited extent of this work, compared with the subjects it embraces, as well as its partaking more of the character of political dissertation than of narrative, must necessarily preclude that circumstantial delineation of events and of characters upon which the beauty as well as usefulness of a regular history so mainly depends. Nor can I venture to assert that it will be found alto-

gether perspicuous to those who are destitute of any previous acquaintance with the period to which it relates; though I have only pre-supposed, strictly speaking, a knowledge of the common facts of English history, and have endeavoured to avoid, in treating of other countries, those allusive references, which imply more information in the reader than the author designs to communicate. But the arrangement which I have adopted has sometimes rendered it necessary to anticipate both names and facts, which are to find a more definite place in a subsequent part of the work.

This arrangement is probably different from that of any former historical retrospect. Every chapter of the following volumes completes its particular subject, and may be considered in some degree as independent of the rest. The order, consequently, in which they are read will not be very material, though of course I should rather prefer that in which they are at present disposed. A solicitude to avoid continual transitions, and to give free scope to the natural association of connected facts, has dictated this arrangement, to which I confess myself partial. And I have found its inconveniences so trifling in composition, that I cannot believe they will occasion much trouble to the reader.

The first chapter comprises the history of France from the invasion of Clovis to the expedition, *exclusively*, of Charles VIII. against Naples. It is not possible to fix accurate limits to the Middle Ages: but though the ten centuries from the fifth to the fifteenth seem, in a general point of view, to constitute that period, a less arbitrary division was necessary to render the commencement and conclusion of an historical narrative satisfactory. The continuous chain of transactions on the stage of human society is ill divided by mere lines of chronological demarcation. But as the subversion of the western empire is manifestly the natural termination of ancient history, so the establishment of the Franks in Gaul appears the most convenient epoch for the commencement of a new period. Less difficulty occurred in finding the other limit. The invasion of Naples by Charles VIII. was the event that first engaged the principal states of Europe in relations of alliance or hostility which may be deduced to the present day, and is the point at which every man who traces backwards its political history will be obliged to pause. It furnishes a determinate epoch in the annals of Italy and France, and nearly coincides with events which naturally terminate the history of the Middle Ages in other countries.

The feudal system is treated in the second chapter, which I have subjoined to the history of France, with which it has a near connexion. Inquiries into the antiquities of that jurisprudence occupied more attention in the last

age than at present, and their dryness may prove repulsive to many readers. But there is no royal road to the knowledge of law; nor can any man render an obscure and intricate disquisition either perspicuous or entertaining. That the feudal system is an important branch of historical knowledge will not be disputed, when we consider not only its influence upon our own constitution, but that one of the parties which at present divide a neighbouring kingdom professes to appeal to the original principles of its monarchy, as they subsisted before the subversion of that polity.

The four succeeding chapters contain a sketch, more or less rapid and general, of the histories of Italy, of Spain, of Germany, and of the Greek and Saracenic empires. In the seventh I have endeavoured to develop the progress of ecclesiastical power, a subject eminently distinguishing the Middle Ages, and of which a concise and impartial delineation has long been desirable.

The English constitution furnishes materials for the eighth chapter. I cannot hope to have done sufficient justice to this theme, which has cost me considerable labour; but it is worthy of remark, that since the treatise of Nathaniel Bacon, itself open to much exception, there has been no historical development of our constitution, founded upon extensive researches, or calculated to give a just notion of its character. For those parts of Henry's history which profess to trace the progress of government are still more jejune than the rest of his volumes; and the work of Professor Millar of Glasgow, however pleasing from its liberal spirit, displays a fault too common among the philosophers of his country, that of theorising upon an imperfect induction, and very often upon a total misapprehension of particular facts.

The ninth and last chapter relates to the general state of society in Europe during the Middle Ages, and comprehends the history of commerce, of manners, and of literature. None however of these are treated in detail, and the whole chapter is chiefly designed as supplemental to the rest, in order to vary the relations under which events may be viewed, and to give a more adequate sense of the spirit and character of the Middle Ages.

In the execution of a plan far more comprehensive than what with a due consideration either of my abilities or opportunities I ought to have undertaken, it would be strangely presumptuous to hope that I can have rendered myself invulnerable to criticism. Even if flagrant errors should not be frequently detected, yet I am aware that a desire of conciseness has pre-

vented the sense of some passages from appearing sufficiently distinct; and though I cannot hold myself generally responsible for omissions, in a work which could only be brought within a reasonable compass by the severe retrenchment of superfluous matter, it is highly probable that defective information, forgetfulness, or too great a regard for brevity, have caused me to pass over many things which would have materially illustrated the various subjects of these inquiries.

I dare not, therefore, appeal with confidence to the tribunal of those superior judges, who, having bestowed a more undivided attention on the particular objects that have interested them, may justly deem such general sketches imperfect and superficial; but my labours will not have proved fruitless, if they shall conduce to stimulate the reflection, to guide the researches, to correct the prejudices, or to animate the liberal and virtuous sentiments of inquisitive youth:

Mi satis ampla
Merces, et mihi grande decus, sim ignotus in ævum
Tum licèt, externo penitùsque inglorius orbi.

VIEW

OF

THE STATE OF EUROPE

DURING THE MIDDLE AGES.

CHAPTER I.

THE HISTORY OF FRANCE, FROM ITS CONQUEST BY CLOVIS TO THE INVASION OF NAPLES BY CHARLES VIII.

PART I.

Fall of the Roman Empire—Invasion of Clovis—First Race of French Kings—Accession of Pepin—State of Italy—Charlemagne—His Reign and Character—Louis the Debonair—His Successors—Calamitous State of the Empire in the ninth and tenth Centuries—Accession of Hugh Capet—His first Successors—Louis VII.—Philip Augustus—Conquest of Normandy—War in Languedoc—Louis IX.—His Character—Digression upon the Crusades—Philip III.—Philip IV.—Aggrandizement of French Monarchy under his Reign—Reigns of his Children—Question of Salic Law—Claim of Edward III.

Subversion of the Roman Empire.

BEFORE the conclusion of the fifth century, the mighty fabric of empire, which valour and policy had founded upon the seven hills of Rome, was finally overthrown, in all the west of Europe, by the barbarous nations from the north, whose martial energy and whose numbers were irresistible. A race of men, formerly unknown or despised, had not only dismembered that proud sovereignty, but permanently settled themselves in its fairest provinces, and imposed their yoke upon the ancient possessors. The Vandals were masters of Africa; the Suevi held part of Spain; the Visigoths possessed the remainder, with a large portion of Gaul; the Burgundians occupied the provinces watered by the Rhone and Saône; the Ostrogoths almost all Italy. The north-west of Gaul, between the Seine and the Loire, some writers have filled with an Armorican republic (1); while the remainder was still nominally subject to the Roman empire, and go-

New settlements of the barbarous nations.

(1) It is impossible not to speak sceptically as to this republic, or rather confederation of independent cities under the rule of their respective bishops, which Du Bos has with great ingenuity raised upon very slight historical evidence, and in defiance of the silence of Gregory, whose see of Tours bor-

verned by a certain Syagrius, rather with an independent than a deputed authority.

Invasion of Clovis. A. D. 486.

At this time, Clovis, king of the Salian Franks, a tribe of Germans long connected with Rome, and originally settled upon the right bank of the Rhine, but who had latterly penetrated as far as Tournay and Cambray (1), invaded Gaul and defeated Syagrius at Soissons. The result of this victory was the subjugation of those provinces which had previously been considered as Roman. But as their allegiance had not been very strict, so their loss was not very severely felt; since the emperors of Constantinople were not too proud to confer upon Clovis the titles of consul and patrician, which he was too prudent to refuse (2).

Some years after this, Clovis defeated the Alemanni, or Swabians, in a great battle at Zulpich, near Cologne. In consequence of a vow, as it is said, made during this engagement (3), and at the instigation of his wife Clotilda, a princess of Burgundy, he became a convert to Christianity. It would be a fruitless enquiry, whether he was sincere in this change; but it is certain, at least, that no policy could have been more successful. The Arian sect, which had been early introduced among the barbarous nations, was predominant, though apparently without intolerance (4), in the Burgundian and Visigoth courts; but the clergy of Gaul were strenuously attached to the Catholic side, and even before his conversion had favoured the arms of Clovis. They now became his most zealous supporters; and were rewarded by him with artful gratitude, and by his

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dered upon their supposed territory. But his hypothesis is not to be absolutely rejected, because it is by no means deficient in internal probability, and the early part of Gregory's history is brief and negligent. Du Bos, Hist. Critique de l'Établissement des Français dans les Gaules, t. i. p. 253. Gibbon, c. 38., after following Du Bos in his text, whispers, as usual, his suspicions in a note.

(1) The system of Père Daniel, who denies any permanent settlement of the Franks on the left bank of the Rhine before Clovis, seems incapable of being supported. It is difficult to resist the presumption that arises from the discovery of the tomb and skeleton of Childeric, father of Clovis, at Tournay, in 1653. See Montfaucon, Monumens de la Monarchie Française, tome i. p. 10.

(2) The theory of Du Bos, who considers Clovis as a sort of lieutenant of the emperors, and as governing the Roman part of his subjects by no other title, has justly seemed extravagant to later critical inquirers into the history of France. But it may nevertheless be true, that the connection between him and the empire, and the emblems of Roman magistracy which he bore, reconciled the conquered to their new masters. This is judiciously stated by the Duke de Nivernois. Mém. de l'Acad. des Inscript. tome xx. p. 174. In the sixth century, however, the Greeks appear to have been nearly ignorant of Clovis's countrymen. Nothing can be made out of a passage in Procopius, where he seems to mention the Armoricans under the name Ἀρβορυχοι; and Agathias gives a strangely romantic account of the Franks, whom he extols for their conformity to Roman laws, πολιτείᾳ ὡς τα πολλα χρωνται Ρωμαϊκη, και νομοις τοις αὐτοις, κ. τ. λ. He goes on to commend their mutual union, and observes particularly that, in partitions of the kingdom, which had frequently been made, they had never taken up arms against each other, nor polluted the land with civil bloodshed. One would almost believe him ironical.

(3) Gregory of Tours makes a very rhetorical story of this famous vow, which, though we cannot disprove, it may be permitted to suspect.—L. ii. c. 30.

(4) Hist. de Languedoc, par Vich et Vaissette, tome i. p. 238. Gibbon, c. 37. A specious objection might be drawn from the history of the Gothic monarchies in Italy, as well as Gaul and Spain, to the great principles of religious toleration. These Arian sovereigns treated their Catholic subjects, it may be said, with tenderness, leaving them in possession of every civil privilege, and were rewarded for it by their defection or sedition. But, in answer to this, it may be observed :—1. That the system of persecution adopted by the Vandals in Africa, succeeded no better; the Catholics of that province having risen against them upon the landing of Belisarius : 2. That we do not know what insults and discouragements the Catholics of Gaul and Italy may have endured, especially from the Arian bishops, in that age of bigotry; although the administrations of Alaric and Theodoric were liberal and tolerant : 3. That the distinction of Arian and Catholic was intimately connected with that of Goth and Roman, of conqueror and conquered; so that it is difficult to separate the effects of national, from those of sectarian, animosity.

descendants with lavish munificence. Upon the pretence of religion, he attacked Alaric, king of the Visigoths, and, by one great victory near Poitiers overthrowing their empire in Gaul, reduced them to the maritime province of Septimania, a narrow strip of coast between the Rhone and the Pyrenees. The exploits of Clovis were the reduction of certain independent chiefs of his own tribe and family, who were settled in the neighbourhood of the Rhine (1). All these he put to death by force or treachery; for he was cast in the true mould of conquerors, and may justly be ranked among the first of his class, both for the splendour and the guiltiness of his ambition (2). 507

Clovis left four sons; one illegitimate, born before his conversion; and three by his queen Clotilda. These four made, it is said, an equal partition of his dominions; which comprehended not only France, but the western and central parts of Germany, besides Bavaria, and perhaps Swabia, which were governed by their own dependent, but hereditary, chiefs. Thierry, the eldest, had what was called Austrasia, the eastern or German division, and fixed his capital at Metz; Clodomir, at Orleans; Childebert, at Paris; and Clotaire, at Soissons (3). During their reigns the monarchy was aggrandized by the conquest of Burgundy. Clotaire, the youngest brother, ultimately re-united all the kingdoms: but upon his death they were again divided among his four sons, and brought together a second time by another Clotaire, the grandson to the first. It is a weary and unprofitable task to follow these changes in detail, through scenes of tumult and bloodshed, in which the eye meets with no sunshine, nor can rest upon any interesting spot. It would be difficult, as Gibbon has justly observed, to find any where more vice or less virtue. The names of two queens are distinguished even in that age for the magnitude of their crimes: Fredegonde, the wife of Chilperic, of whose atrocities none have doubted; and Brunehaut, queen of Austrasia, who has met with advocates in modern times, less, perhaps, from any fair presumptions of her innocence, than from compassion for the cruel death which she underwent (4).

His descendants. 511 558 613

(1) Modern historians, in enumerating these *reguli*, call one of them king of Mans. But it is difficult to understand how a chieftain, independent of Clovis, could have been settled in that part of France. In fact, Gregory of Tours, our only authority, does not say that this prince, Regnomeris, was king of Mans, but that he was put to death in that city: apud Cenomannis civitatem jussu Chlodovechi interfectus est.

(2) The reader will be gratified by an admirable memoir, by the Duke de Nivernois, on the policy of Clovis, in the twentieth volume of the Academy of Inscriptions.

(3) Quatuor filii regnum accipiunt, et inter se æquâ lance dividunt.—Greg. Tur. l. iii. c. l. It would rather perplex a geographer to make an equal division of Clovis's empire into portions, of which Paris, Orleans, Metz, and Soissons should be the respective capitals. I apprehend, in fact, that Gregory's expression is not very precise. The kingdom of Soissons seems to have been the least of the four, and that of Austrasia the greatest. But the partitions made by these princes were exceedingly complex; insulated fragments of territory, and even undivided shares of cities, being allotted to the worse provided brothers, by way of compensation, out of the larger kingdoms. It would be very difficult to ascertain the limits of these minor monarchies. But the French empire was always considered as one, whatever might be the number of its inheritors; and from accidental circumstances it was so frequently re-united, as fully to keep up this notion.

(4) Every history will give a sufficient epitome of the Merovingian dynasty. The facts of these times are of little other importance than as they

628—638

Their degeneracy.

But after Dagobert, son of Clotaire II., the kings of France dwindled into personal insignificance, and are generally treated by later historians as *insensati*, or idiots (1). The whole power of the kingdom devolved upon the mayors of the palace, originally officers of the household, through whom petitions or representations were laid before the king. The weakness of sovereigns rendered this office important, and still greater weakness suffered it to become elective; men of energetic talents and ambition united it with military command; and the history of France, for half a century, presents no names more conspicuous than those of Ebroin and Grimoald, mayors of Neustria and Austrasia, the western and eastern divisions of the French monarchy (2). These, however, met with violent ends; but a more successful usurper of the royal authority was Pepin Heristal, first mayor, and afterwards duke, of Austrasia; who united with almost an avowed sovereignty over that division, a paramount command over the French or Neustrian provinces, where nominal kings of the Merovingian family were still permitted to exist. This authority he transmitted to a more renowned hero, his son Charles Martel, who, after some less important exploits, was called upon to encounter a new and terrible enemy. The Saracens, after subjugating Spain, had penetrated into the very heart of France. Charles Martel gained a complete victory over them between Tours and Poitiers (3), in which 300,000 Mohammedans are hyperbolically asserted to have fallen. The reward of this victory was the province of Septimania, which the Saracens had conquered from the Visigoths (4).

Mayors of the palace.

732

impress on the mind a thorough notion of the extreme wickedness of almost every person concerned in them, and consequently of the state to which society was reduced. But there is no advantage in crowding the memory with barbarian wars and assassinations. For the question about Brunehaut's character, who has had partisans almost as enthusiastic as those of Mary of Scotland, the reader may consult Pasquier, Recherches de la France, l. viii. or Velly, Hist. de France, tome i. on one side, and a dissertation by Gaillard, in the Memoirs of the Academy of Inscriptions, tome xxx. on the other. The last is unfavourable to Brunehaut, and perfectly satisfactory to my judgment.

(1) An ingenious attempt is made by the Abbé Vertot, Mém. de l'Académie, tome vi., to rescue these monarchs from this long-established imputation. But the leading fact is irresistible, that all the royal authority was lost during their reigns. However, the best apology seems to be, that, after the victories of Pepin Heristal, the Merovingian kings were, in effect, conquered, and their inefficiency was a matter of necessary submission to a master.

(2) The original kingdoms of Soissons, Paris, and Orleans were consolidated into that denominated Neustria, to which Burgundy was generally appendant, though distinctly governed by a mayor of its own election. But Aquitaine, the exact bounds of which I do not know, was, from the time of Dagobert I., separated from the rest of the monarchy, under a ducal dynasty, sprung from Aribert, brother of that monarch.

(3) Tours is above seventy miles distant from Poitiers; but I do not find that any French antiquary has been able to ascertain the place of this great battle with more precision; which is remarkable, since, after so immense a slaughter, we should expect the testimony of 'grandia effossis ossa sepulcris.'

The victory of Charles Martel has immortalized his name, and many justly be reckoned among those few battles of which a contrary event would have essentially varied the drama of the world in all its subsequent scenes; with Marathon, Arbela, the Metaurus, Châlons, and Leipsic. Yet do we not judge a little too much by the event, and follow, as usual, in the wake of fortune? Has not more frequent experience condemned those who set the fate of empires upon a single cast, and risk a general battle with invaders, whose greater peril is in delay? Was not this the fatal error by which Roderic had lost his kingdom? Was it possible that the Saracens could have retained any permanent possession of France, except by means of a victory? And did not the contest upon the broad campaign of Poitou afford them a considerable prospect of success, which a more cautious policy would have withheld?

(4) This conquest was completed by Pepin in 759. The inhabitants preserved their liberties by treaty and Vaissette deduces from this solemn assurance

Such powerful subjects were not likely to remain long contented without the crown; but the circumstances under which it was transferred from the race of Clovis are connected with one of the most important revolutions in the history of Europe. The mayor Pepin, inheriting his father Charles Martel's talents and ambition, made, in the name and with the consent of the nation, a solemn reference to the pope Zacharias, as to the deposition of Childeric III., under whose nominal authority he himself was reigning. The decision was favourable; that he who possessed the power, should also bear the title of king. The unfortunate Merovingian was dismissed into a convent, and the Franks, with one consent, raised Pepin to the throne, the founder of a more illustrious dynasty. In order to judge of the importance of this revolution to the see of Rome, as well as to France, we must turn our eyes upon the affairs of Italy.

Change in the royal family. Accession of Pepin.

752

The dominion of the Ostrogoths was annihilated by the arms of Belisarius and Narses in the sixth century, and that nation appears no more in history. But not long afterwards, the Lombards, a people for some time settled in Pannonia, not only subdued that northern part of Italy which has retained their name, but, extending themselves southward, formed the powerful duchies of Spoleto and Benevento. The residence of their kings was in Pavia; but the hereditary vassals, who held those two duchies, might be deemed almost independent sovereigns (1). The rest of Italy was governed by exarchs, deputed by the Greek emperors, and fixed at Ravenna. In Rome itself, neither the people, nor the bishops, who had already conceived in part their schemes of ambition, were much inclined to endure the superiority of Constantinople; yet their disaffection was counterbalanced by the inveterate hatred, as well as jealousy, with which they regarded the Lombards. But an impolitic and intemperate persecution, carried on by two or three Greek emperors against a favourite superstition, the worship of images, excited commotions throughout Italy, of which the Lombards took advantage, and easily wrested the exarchate of Ravenna from the eastern empire. It was far from the design of the popes to see their nearest enemies so much aggrandized; and any effectual assistance from the emperor Constantine Copronymus would have kept Rome still faithful. But having no hope from his arms, and provoked by his obstinate intolerance, the pontiffs had recourse to France (2); and the service they had rendered to Pepin led to reciprocal obligations of the greatest mag-

The Lombards.

They reduce the exarchate of Ravenna, 752,

the privileges of Languedoc.—Hist. de Lang. tome i. p. 412.

(1) The history, character, and policy of the Lombards are well treated by Gibbon, c. 45. See, too, the fourth and fifth books of Giannone, and some papers by Gaillard in the Memoirs of the Academy of Inscriptions, tomes xxxii. xxxv. xlv.

(2) There had been some previous overtures to Charles Martel, as well as to Pepin himself: the habitual sagacity of the court of Rome perceiving the growth of a new western monarchy, which would be, in faith and arms, their surest ally. Muratori, Ann. d'Ital. A. D. 741.

which Pepin reconquers, and bestows on the pope.

nitude. At the request of Stephen II. the new king of France descended from the Alps, drove the Lombards from their recent conquests, and conferred them upon the pope. This memorable donation nearly comprised the modern provinces of Romagna and the March of Ancona (1).

Charlemagne. 768

The state of Italy, which had undergone no change for nearly two centuries, was now rapidly verging to a great revolution. Under the shadow of a mighty name, the Greek empire had concealed the extent of its decline. That charm was now broken: and the Lombard kingdom, which had hitherto appeared the only competitor in the lists, proved to have lost its own energy in awaiting the occasion for its display. France was far more than a match for the power of Italy, even if she had not been guided by the towering ambition and restless activity of the son of Pepin. It was almost the first exploit of Charlemagne, after the death of his brother Carloman

772 He conquers Lombardy; 774

had reunited the Frankish empire under his dominion (2), to subjugate the kingdom of Lombardy. Neither Pavia nor Verona, its most considerable cities, interposed any material delay to his arms; and the chief resistance he encountered was from the dukes of Friuli and Benevento, the latter of whom could never be brought into thorough subjection to the conqueror. Italy, however, be the cause what it might, seems to have tempted Charlemagne far less than the dark forests of Germany. For neither the southern provinces, nor Sicily, could have withstood his power, if it had been steadily directed against them. Even

part of Spain;

Spain hardly drew so much of his attention, as the splendour of the prize might naturally have excited. He gained, however, a very important accession to his empire, by conquering from the Saracens the territory contained between the Pyrenees and the Ebro. This was formed into the Spanish March, governed by the count of Barcelona, part of which at least must be considered as appertaining to France till the twelfth century (3).

and Saxony.

But the m st tedious and difficult achievement of Charlemagne was the reduction of the Saxons. The wars with this nation, who occupied nearly the modern circles of Westphalia and Lower Saxony, lasted for thirty years. Whenever the conqueror withdrew his armies, or even his person, the Saxons broke into fresh rebellion; which his unparalleled rapidity of movement seldom failed to crush without delay. From such perseve-

(1) Giannone, l. v. c. 2.

(2) Carloman, younger brother of Charles, took the Austrasian or German provinces of the empire. The custom of partition was so fully established, that those wise and ambitious princes, Charles Martel, Pepin, and Charlemagne himself, did not venture to thwart the public opinion by introducing primogeniture. Carloman would not long have stood against his brother, who, after his death, usurped the inheritance of his two infant children.

(3) The counts of Barcelona always acknowledged the feudal superiority of the kings of France, till some time after their own title had been merged in that of kings of Aragon. In 1180, legal instruments executed in Catalonia ceased to be dated by the year of the king of France; and as there certainly remained no other mark of dependence, the separation of the principality may be referred to that year. But the rights of the French crown over it were finally ceded by Louis IX. in 1258. De Marca, Marca Hispanica, p. 515. Art de vérifier les Dates, t. ii. p. 291.

rance on either side, destruction of the weaker could alone result. A large colony of Saxons were finally transplanted into Flanders and Brabant, countries hitherto ill-peopled, in which their descendants preserved the same unconquerable spirit of resistance to oppression. Many fled to the kingdoms of Scandinavia, and, mingling with the Northmen, who were just preparing to run their memorable career, revenged upon the children and subjects of Charlemagne the devastation of Saxony. The remnant embraced Christianity, their aversion to which had been the chief cause of their rebellions, and acknowledged the sovereignty of Charlemagne; a submission, which even Witikind, the second Arminius of Germany, after such irresistible conviction of her destiny, did not disdain to make. But they retained, in the main, their own laws; they were governed by a duke of their own nation, if not of their own election; and for many ages they were distinguished by their original character among the nations of Germany.

The successes of Charlemagne on the eastern frontier of his empire against the Sclavonians of Bohemia, and Huns or Avars of Pannonia, though obtained with less cost, were hardly less eminent. In all his wars, the newly conquered nations, or those whom fear had made dependent allies, were employed to subjugate their neighbours; and the incessant waste of fatigue and the sword was supplied by a fresh population that swelled the expanding circle of dominion. I do not know that the limits of the new western empire are very exactly defined by contemporary writers, nor would it be easy to appreciate the degree of subjection in which the Sclavonian tribes were held. As an organized mass of provinces, regularly governed by imperial officers, it seems to have been nearly bounded, in Germany, by the Elbe, the Saale, the Bohemian mountains, and a line drawn from thence crossing the Danube above Vienna, and prolonged to the gulf of Istria. Part of Dalmatia was comprised in the duchy of Friuli. In Italy, the empire extended not much beyond the modern frontier of Naples, if we exclude, as was the fact, the duchy of Benevento from any thing more than a titular subjection. The Spanish boundary, as has been said already, was the Ebro (1).

Extent of his dominions.

A seal was put to the glory of Charlemagne, when Leo III., in the name of the Roman people, placed upon his head the imperial crown. His father, Pepin, had borne the title of Patrician, and he had himself exercised, with that title, a regular sovereignty over Rome (2). Money was coined in his name, and

His coronation as Emperor. 800

(1) I follow in this the map of Koch, in his Tableau des Révolutions de l'Europe, tom. i. That of Vaugondy, Paris, 1782, includes the dependent Sclavonic tribes, and carries the limit of the empire to the Oder and frontiers of Poland. The authors of l'Art de vérifier les Dates extend it to the Raab. It would require a long examination to give a precise statement.

(2) The Patricians of the lower empire were governors sent from Constantinople to the provinces. Rome had long been accustomed to their name and power. The subjection of the Romans, both clergy and laity, to Charlemagne, as well before as after he bore the imperial name, seems to be established. See Dissertation Historique, par Le Blanc, subjoined to his Traité des Monnaies de France, p. 18. and

an oath of fidelity was taken by the clergy and people. But the appellation of Emperor seemed to place his authority over all his subjects on a new footing. It was full of high and indefinite pretension, tending to overshadow the free election of the Franks by a fictitious descent from Augustus. A fresh oath of fidelity to him as emperor was demanded from his subjects. His own discretion, however, prevented him from affecting those more despotic prerogatives, which the imperial name might still be supposed to convey.

His character.

In analyzing the characters of heroes, it is hardly possible to separate altogether the share of fortune from their own. The epoch made by Charlemagne in the history of the world, the illustrious families which prided themselves in him as their progenitor, the very legends of romance, which are full of his fabulous exploits, have cast a lustre around his head, and testify the greatness that has embodied itself in his name. None indeed of Charlemagne's wars can be compared with the Saracenic victory of Charles Martel; but *that* was a contest for freedom, *his* for conquest; and fame is more partial to successful aggression than to patriotic resistance. As a scholar, his acquisitions were probably little superior to those of his unrespected son; and in several points of view the glory of Charlemagne might be extenuated by an analytical dissection (1). But, rejecting a mode of judging equally uncandid and fallacious, we shall find that he possessed in every thing that grandeur of conception which distinguishes extraordinary minds. Like Alexander, he seemed born for universal innovation: in a life restlessly active, we see him reforming the coinage, and establishing the legal divisions of money; gathering about him the learned of every country; founding schools, and collecting libraries; interfering, but with the tone of a king, in religious controversies; aiming, though prematurely, at the formation of a naval force; attempting, for the sake of commerce, the magnificent enterprize of uniting the Rhine and Danube (2); and meditating to mould the discordant codes of Roman and barbarian laws into an uniform system.

The great qualities of Charlemagne were indeed alloyed by the vices of a barbarian and a conqueror. Nine wives, whom he di-

St. Marc, Abrégé Chronologique de l'Histoire de l'Italie. t. 1. The first of these writers does not allow that Pepin exercised any authority at Rome. A good deal of obscurity rests over its internal government for near fifty years; but there is some reason to believe that the nominal sovereignty of the Greek emperors was not entirely abrogated. Muratori, Annali d'Italia, ad ann. 772. St. Marc, t. i. p. 356. 372. A mosaic, still extant in the Lateran palace. represents our Saviour giving the keys to St. Peter with one hand, and with the other, a standard to a crowned prince, bearing the inscription, Constantine V. But Constantine V. did not begin to reign till 780; and if this piece of workmanship was made under Leo III., as the authors of l'Art de vérifier les Dates imagine, it could not be earlier than 795. T. 1. p. 262. Muratori, ad ann. 798. However this may be, there can be no question that a considerable share of jurisdiction and authority was practically exercised by the popes during this period. Vid. Murat. ad ann. 789.

(1) Eginhard attests his ready eloquence. his perfect mastery of Latin, his knowledge of Greek, so far as to read it, his acquisitions in logic, grammar, rhetoric, and astronomy. But the anonymous author of the life of Louis the Debonair attributes most of these accomplishments to that unfortunate prince.

(2) See an essay upon this project in the Memoirs of the Academy of Inscriptions, tome xviii. The rivers which were designed to form the links of this junction were the Altmuhl, the Regnitz, and the Main; but their want of depth, and the sponginess of the soil, appear to present insuperable impediments to its completion.

vorced with very little ceremony, attest the license of his private life, which his temperance and frugality can hardly be said to redeem (1). Unsparing of blood, though not constitutionally cruel, and wholly indifferent to the means which his ambition prescribed, he beheaded in one day four thousand Saxons; an act of atrocious butchery, after which his persecuting edicts, pronouncing the pain of death against those who refused baptism, or even who ate flesh during Lent, seem scarcely worthy of notice. This union of barbarous ferocity with elevated views of national improvement, might suggest the parallel of Peter the Great. But the degrading habits and brute violence of the Muscovite place him at an immense distance from the restorer of the empire.

A strong sympathy for intellectual excellence was the leading characteristic of Charlemagne, and this undoubtedly biassed him in the chief political error of his conduct, that of encouraging the power and pretensions of the hierarchy. But, perhaps, his greatest eulogy is written in the disgraces of succeeding times, and the miseries of Europe. He stands alone like a beacon upon a waste, or a rock in the broad ocean. His sceptre was as the bow of Ulysses, which could not be drawn by any weaker hand. In the dark ages of European history, the reign of Charlemagne affords a solitary resting-place between two long periods of turbulence and ignominy, deriving the advantages of contrast both from that of the preceding dynasty, and of a posterity for whom he had formed an empire which they were unworthy and unequal to maintain (2).

Louis the Debonair. 814

Pepin, the eldest son of Charlemagne, died before him, leaving a natural son, named Bernard (3). Even if he had been legitimate, the right of representation was not at all established during these ages; indeed the general prejudice seems to have inclined against it. Bernard, therefore, kept only the kingdom of Italy, which had been transferred to his father; while Louis, the younger son of Charlemagne, inherited the Empire. But, in a short time, Bernard, having attempted a rebellion against his uncle, was sentenced to lose his eyes, which occasioned his death; a cruelty more agreeable to the prevailing tone of manners, than to the character of Louis, who bitterly reproached himself for the severity he had been persuaded to use.

817

Under this prince, called by the Italians the pious, and by the French the Debonair, or Good-natured (4), the mighty structure of

(1) I apprehend that there is no foundation for the charge of an incestuous passion for his daughters, which Voltaire calls *une faiblesse*. The error seems to have originated in a mis-interpreted passage of Eginhard. These ladies, indeed, were far from being models of virtue, and their lives brought scandal upon the royal palace.

(2) The life of Charlemagne, by Gaillard, without being made perhaps so interesting as it ought to have been, presents an adequate view both of his actions and character. Schmidt, Hist des Allemands, tome ii. appears to me a superior writer.

(3) A contemporary author, Thegan, ap. Muratori, A. D. 819, asserts that Bernard was born of a concubine. I do not know why modern historians represent it otherwise.

(4) These names, as a French writer observes, meant the same thing. *Pius* had, even in good Latin, the sense of *mitis*, meek, forbearing, or what the French call *debonair*. Synonymes de Rouband, tome i. p. 257. Our English word debonair is hardly used in the same sense, if indeed it

his father's power began rapidly to decay. I do not know that Louis deserves so much contempt as he has undergone; but historians have in general more indulgence for splendid crimes, than for the weaknesses of virtue. There was no defect in Louis's understanding or courage; he was accomplished in martial exercises, and in all the learning which an education, excellent for that age, could supply. No one was ever more anxious to reform the abuses of administration; and whoever compares his capitularies with those of Charlemagne will perceive that, as a legislator, he was even superior to his father. The fault lay entirely in his heart; and this fault was nothing but a temper too soft, and a conscience too strict (1). It is not wonderful that the empire should have been speedily dissolved; a succession of such men as Charles Martel, Pepin, and Charlemagne, could alone have preserved its integrity; but the misfortunes of Louis and his people were immediately owing to the following errors of his conduct.

His misfortunes and errors. 817.

Soon after his accession, Louis thought fit to associate his eldest son Lothaire to the empire, and to confer the provinces of Bavaria and Aquitaine, as subordinate kingdoms, upon the two younger, Louis and Pepin. The step was, in appearance, conformable to his father's policy, who had acted towards himself in a similar manner. But such measures are not subject to general rules, and exact a careful regard to characters and circumstances. The principle, however, which regulated this division, was learned from Charlemagne (2), and could alone, if strictly pursued, have given unity and permanence to the empire. The elder brother was to preserve his superiority over the others, so that they should neither make peace nor war, nor even give answer to ambassadors, without his consent. Upon the death of either, no further partition was to be made; but whichever of his children might become the popular choice, was to inherit the whole kingdom, under the same superiority of the head of the family (3). This compact was, from the beginning, disliked by the younger brothers; and an event, upon which Louis does not seem to have calculated, soon disgusted his colleague Lothaire. Judith of Bavaria, the emperor's second wife, an ambitious woman, bore him a son, by name Charles, whom both parents were naturally anxious to place on an equal footing with his brothers. But this could only be done at the expense of Lothaire, who was ill-disposed to see his empire still further dismembered for this child of a second bed. Louis passed his life in a struggle with three undutiful sons, who abused his paternal kindness by constant rebellions.

can be called an English word; but I have not altered Louis's appellation, by which he is so well known.

(1) Schmidt, Hist. des Allemands, tome ii. has done more justice than other historians to Louis's character. Vaissette attests the goodness of his government in Aquitaine, which he held as a subordinate kingdom during his father's life. It extended from the Loire to the Ebro, so that the trust was not contemptible.—Hist. de Languedoc, tome i. p. 476.

(2) Charlemagne had made a prospective arrangement in 806, the conditions of which are nearly the same as those of Louis; but the death of his two elder sons, Charles and Pepin, prevented its taking effect. Baluz. Capitularia, p. 441.

(3) Baluzii Capitularia, tome i. p. 575.

These were rendered more formidable by the concurrence of a different class of enemies, whom it had been another error of the emperor to provoke. Charlemagne had assumed a thorough controul and supremacy over the clergy; and his son was perhaps still more vigilant in chastising their irregularities, and reforming their rules of discipline. But to this, which they had been compelled to bear at the hands of the first, it was not equally easy for the second to obtain their submission. Louis therefore drew on himself the inveterate enmity of men, who united with the turbulence of martial nobles, a skill in managing those engines of offence which were peculiar to their order, and to which the implicit devotion of his character laid him very open. Yet, after many vicissitudes of fortune, and many days of ignominy, his wishes were eventually accomplished. Charles, his youngest son, sirnamed the Bald, obtained, upon his death, most part of France, while Germany fell to the share of Louis, and the rest of the imperial dominions, with the title, to the eldest, Lothaire. This partition was the result of a sanguinary, though short, contest; and it gave a fatal blow to the empire of the Franks. For the treaty of Mersen, in 847, abrogated the sovereignty that had been attached to the eldest brother and to the imperial name in former partitions; each held his respective kingdom as an independent right (1).

840 Partition of the empire

847 among his sons, Lothaire, Louis, and Charles the Bald.

The subsequent partitions made among the children of these brothers are of too rapid succession to be here related. In about forty years, the empire was nearly reunited under Charles the Fat, son of Louis of Germany; but his short and inglorious reign ended in his deposition. From this time the possession of Italy was contested among her native princes; Germany fell at first to an illegitimate descendant of Charlemagne, and in as hort time was entirely lost by his family; two kingdoms, afterwards united, were formed by usurpers, out of what was then called Burgundy, and comprised the provinces between the Rhone and the Alps, with Franche Comté, and great part of Switzerland (2). In France, the Carlovingian kings continued for another century; but their line was interrupted two or three times by the election or usurpation of a powerful family, the counts of Paris and Orleans, who ended, like the old mayors of the palace, in dispersing the phantoms of royalty they had professed to serve (3). Hugh

Decline of the Carlovingian family. Charles the Fat, emperor 881. King of France 885. Deposed 887.

Dismemberment of the empire.

Kings of France. Eudes 887. Charles the Simple 898. Robert? 922. Ralph 923. Louis IV. 936. Lothaire 954. Louis V. 986. Counts of Paris.

(1) Baluzii Capitularia, tome ii. p. 42. Velly, t. ii. p. 75. The expressions of this treaty are perhaps equivocal; but the subsequent conduct of the brothers and their family justifies the construction of Velly, which I have followed.

(2) These kingdoms were denominated Provence and Transjurane Burgundy. The latter was very small, comprising only part of Switzerland; but its second sovereign Rodolph II. acquired by treaty almost the whole of the former; and the two united were called the kingdom of Arles. This lasted from 933 to 1032, when Rodolph III. bequeathed his dominions to the Emperor Conrad II.—Art de vérifier les Dates, tome ii. p. 427—432.

(3) The family of Capet is generally admitted to possess the most ancient pedigree of any sovereign

Capet, the representative of this house, upon the death of Louis V. placed himself upon the throne; thus founding the third and most permanent race of French sovereigns. Before this happened, the descendants of Charlemagne had sunk into insignificance, and retained little more of France than the city of Laon. The rest of the kingdom had been seized by the powerful nobles who, with the nominal fidelity of the feudal system, maintained its practical independence and rebellious spirit.

State of the people.

These were times of great misery to the people, and the worst, perhaps, that Europe has ever known. Even under Charlemagne, we have abundant proofs of the calamities which the people suffered. The light which shone around him was that of a consuming fire. The free proprietors, who had once considered themselves as only called upon to resist foreign invasion, were harassed with endless expeditions, and dragged away to the Baltic sea or the banks of the Drave. Many of them, as we learn from his Capitularies, became ecclesiastics to avoid military conscription (1). But far worse must have been their state under the lax government of succeeding times, when the dukes and counts, no longer checked by the vigorous administration of Charlemagne, were at liberty to play the tyrants in their several territories, of which they now became almost the sovereigns. The poorer landholders accordingly were forced to bow their necks to the yoke; and either by compulsion, or through hope of being better protected, submitted their independent patrimonies to the feudal tenure.

But evils still more terrible than these political abuses were the lot of those nations who had been subject to Charlemagne. They, indeed, may appear to us little better than ferocious barbarians: but they were exposed to the assaults of tribes, in comparison of whom they must be deemed humane and polished. Each frontier of the empire had to dread the attack of an enemy. The coasts of

The Saracens.

Italy were continually alarmed by the Saracens of Africa, who possessed themselves of Sicily and Sardinia, and became masters of the Mediterranean sea (2). Though

line in Europe. Its succession through males is unequivocally deduced from Robert the Brave, made governor of Anjou in 864, and father of Eudes king of France, and of Robert, who was chosen by a party in 922, though, as Charles the Simple was still acknowledged in some provinces, it is uncertain whether he ought to be counted in the royal list. It is, moreover, highly probable that Robert the Brave was descended, equally through males, from St. Arnoul, who died in 640, and consequently nearly allied to the Carlovingian family, who derive their pedigree from the same head.—See Preuves de la généalogie de Hugues Capet, in l'Art de vérifier les Dates, tome i. p. 566.

(1) Capitularia, A. D. 803. Whoever possessed three mansi of alodial property, was called upon for personal service, or at least to furnish a substitute. Nigellus, author of a poetical Life of Louis I., seems to implicate Charlemagne himself in some of the oppressions of his reign. It was the first care of the former to redress those who had been injured in his father's time.—Recueil des Historiens, tome vi. N. B. I quote by this title the great collection of French historians, charters, and other documents illustrative of the middle ages, more commonly known by the name of its first editor, the Benedictine Bouquet. But as several learned men of that order were successively concerned in this work, not one half of which has yet been published, it seemed better to follow its own title-page.

(2) These African Saracens belonged to the Aglabites, a dynasty that reigned at Tunis for the whole of the ninth century, after throwing off the yoke of the Abbassite Khalifs. They were overthrown themselves in the next age by the Fatimites. Sicily was first invaded in 827: but the city of Syracuse was only reduced in 878.

the Greek dominions in the south of Italy were chiefly exposed to them, they twice insulted and ravaged the territory of Romé; nor was there any security even in the neighbourhood of the maritime Alps, where, early in the tenth century, they settled a piratical colony (1). 846—849

Much more formidable were the foes by whom Germany was assailed. The Sclavonians, a widely extended people, whose language is still spoken upon half the surface of Europe, had occupied the countries of Bohemia, Poland, and Pannonia (2), on the eastern confines of the empire, and from the time of Charlemagne acknowledged its superiority. But at the end of the ninth century, a Tartarian tribe, the Hungarians, overspreading that country which since has borne their name, and moving forward like a vast wave, brought a dreadful reverse upon Germany. Their numbers were great, their ferocity untamed. They fought with light cavalry and light armour, trusting to their showers of arrows, against which the swords and lances of the European armies could not avail. The memory of Attila was renewed in the devastations of these savages, who, if they were not his compatriots, resembled them both in their countenances and customs. All Italy, all Germany, and the south of France, felt this scourge (3); till Henry the Fowler, and Otho the Great, drove them back by successive victories within their own limits, where, in a short time, they learned peaceful arts, adopted the religion and followed the policy of Christendom. The Hungarians. 934, 954

If any enemies could be more destructive than those Hungarians, they were the pirates of the north, known commonly by the name of Normans. The love of a predatory life seems to have attracted adventurers of different nations to the Scandinavian seas, from whence they infested, not only by maritime piracy, but continual invasions, the northern coasts both of France and Germany. The causes of their sudden appearance are inexplicable, or at least could only be sought in the ancient traditions of Scandinavia. For, undoubtedly, the coasts of France and England were as little protected from depredations under the Merovingian kings, and those of the Heptarchy, as in subsequent times. Yet only one instance of an attack from this side is recorded, and that before the middle of the sixth century (4), till the age of Charlemagne. In The Normans.

(1) Muratori, Annali d'Italia, and an. 906. et alibi. These Saracens of Frassineto, supposed to be between Nice and Monaco, were extirpated by a count of Provence in 972.

(2) I am sensible of the awkward effect of introducing this name from a more ancient geography, but it saves a circumlocution still more awkward. Austria would convey an imperfect idea, and the Austrian dominions could not be named without a tremendous anachronism.

(3) In 924 they overran Languedoc. Raymond-Pons, count of Toulouse, cut their army to pieces; but they had previously committed such ravages, that the bishops of that province, writing soon afterwards to Pope John X., assert that scarcely any eminent ecclesiastics, out of a great number, were left alive.—Hist. de Languedoc, tome ii. p. 60. They penetrated into Guienne, as late as 951. Flodoardi Chronicon, in Recueil des Historiens, tome viii. In Italy, they inspired such terror, that a mass was composed expressly deprecating this calamity: Ab Ungarorum nos defendas jaculis! In 937, they ravaged the country as far as Benevento and Capua. Muratori, Ann. d'Italia.

(4) Greg. Turon, l. iii. c. 3.

787, the Danes, as we call those northern plunderers, began to infest England, which lay most immediately open to their incursions. Soon afterwards they ravaged the coasts of France. Charlemagne repulsed them by means of his fleets; yet they pillaged a few places during his reign. It is said that, perceiving one day, from a port in the Mediterranean, some Norman vessels which had penetrated into that sea, he shed tears, in anticipation of the miseries which awaited his empire (1). In Louis's reign, their depredations upon the coasts were more incessant (2), but they did not penetrate into the inland country till that of Charles the Bald. The wars between that prince and his family, which exhausted France of her noblest blood, the insubordination of the provincial governors, even the instigation of some of Charles's enemies, laid all open to their inroads. They adopted an uniform plan of warfare both in France and England: sailing up navigable rivers in their vessels of small burden, and fortifying the islands which they occasionally found, they made these intrenchments at once an asylum for their women and children, a repository for their plunder, and a place of retreat from superior force. After pillaging a town, they retired to these strong holds or to their ships; and it was not till 872 that they ventured to keep possession of Angers, which, however, they were compelled to evacuate. Sixteen years afterwards, they laid siege to Paris, and committed the most ruinous devastations on the neighbouring country. As these Normans were uncheeked by religious awe, the rich monasteries, which had stood harmless amidst the havoc of Christian war, were overwhelmed in the storm. Perhaps they may have endured some irrecoverable losses of ancient learning; but their complaints are of monuments disfigured, bones of saints and kings dispersed, treasures carried away. St. Denis redeemed its abbot from captivity with six hundred and eighty-five pounds of gold. All the chief abbeys were stripped about the same time, either by the enemy, or for contributions to the public necessity. So impoverished was the kingdom, that in 860 Charles the Bald had great difficulty in collecting three thousand pounds of silver, to subsidise a body of Normans against their countrymen. The kings of France, too feeble to prevent or repel these invaders, had recourse to the palliative of buying peace at their hands, or rather precarious armistices to which reviving thirst of plunder soon put an end. At length Charles the Simple, in 918, ceded a great province, which they had already partly occupied, partly rendered desolate, and which has derived from them the name of Normandy. Ignomi-

(1) In the ninth century, the Norman pirates not only ravaged the Balearic isles, and nearer coasts of the Mediterranean, but even Greece. De Marca, Marca Hispanica, p. 327.

(2) Nigellus, the poetical biographer of Louis, gives the following description of the Normans:

Nori quoque Francisco dicuntur nomine *manni*.
Veloces, agiles, armigerique nimis;
Ipse quidem populus latè pernotus habetur,
Lintre dapes quærit, incolitatque mare.
Pulcher adest facie, vultuque statuque decorus.
L. iv.

He goes on to tell us, that they worshipped Neptune.—Was it a similarity of name, or of attributes, that deceived him?

nions as this appears, it proved no impolitic step. Rollo, the Norman chief, with all his subjects, became Christians and Frenchmen; and the kingdom was at once relieved from a terrible enemy, and strengthened by a race of hardy colonists (1).

Accession of Hugh Capet. 987. State of France at that time.

The accession of Hugh Capet had not the immediate effect of restoring the royal authority over France. His own very extensive fief was now indeed united to the crown; but a few great vassals occupied the remainder of the kingdom. Six of these obtained, at a subsequent time, the exclusive appellation of peers of France; the count of Flanders, whose fief stretched from the Scheldt to the Somme; the count of Champagne; the duke of Normandy, to whom Britany did homage; the duke of Burgundy, on whom the count of Nivernois seems to have depended; the duke of Aquitaine, whose territory, though less than the ancient kingdom of that name, comprehended Poitou, Limousin, and most of Guienne, with the feudal superiority over the Angoumois, and some other central districts; and, lastly, the count of Toulouse, who possessed Languedoc, with the small countries of Quercy and Rouergue, and the superiority over Auvergne (2). Besides these six, the duke of Gascony, not long afterwards united with Aquitaine, the counts of Anjou, Ponthieu, and Vermandois, the viscount of Bourges, the lords of Bourbon and Coucy, with one or two other vassals, held immediately of the last Carlovingian kings (3). This was the aristocracy, of which Hugh Capet usurped the direction; for the suffrage of no general assembly gave a sanction to his title. On the death of Louis V. he took advantage of the absence of Charles duke of Lorraine, who, as the deceased king's uncle, was nearest heir, and procured his own consecration at Rheims. At first he was by no means acknowledged in the kingdom; but his contest with Charles proving successful, the chief vassals ultimately gave at least a tacit consent to the usurpation, and permitted the royal name to descend undisputed upon his posterity (4). But this was almost the sole attribute of sovereignty which the first kings of the third dynasty enjoyed. For a long pe-

(1) An exceedingly good sketch of these Norman incursions, and of the political situation of France during that period, may be found in two Memoirs by M. Bonamy, Mém. de l'Académie des Inscript. tomes xv. and xvii. These I have chiefly followed in the text.

(2) Auvergne changed its feudal superior twice. It had been subject to the duke of Aquitaine till about the middle of the tenth century. The counts of Toulouse then got possession of it; but early in the twelfth century the counts of Auvergne again did homage to Guienne. It is very difficult to follow the history of these fiefs.

(3) The *immediacy* of vassals, in times so ancient, is open to much controversy. I have followed the authority of those industrious Benedictines, the editors of l'Art de vérifier les Dates.

(4) The south of France not only took no part in Hugh's elevation, but long refused to pay him any obedience, or rather to acknowledge his title, for obedience was wholly out of the question. The style of charters ran, instead of the king's name. *Deo regnante, rege expectante*, or *absente rege terreno*. He forced Guienne to submit about 990. But in Limousin they continued to acknowledge the sons of Charles of Lorraine till 1009. Vaissette, Hist. de Lang. t. ii. p. 120. 150. Before this, Toulouse had refused to recognise Eudes and Raoul, two kings of France, who were not of the Carlovingian family, and even hesitated about Louis IV. and Lothaire, who had an hereditary right. Idem.

These proofs of Hugh Capet's usurpation seem not to be materially invalidated by a dissertation in the 50th volume of the Academy of Inscriptions, p. 553. It is not, of course, to be denied, that the northern parts of France acquiesced in his assumption of the royal title, if they did not give an express consent to it.

riod before and after the accession of that family, France has, properly speaking, no national history. The character or fortune of those who were called its kings, were little more important to the majority of the nation than those of foreign princes. Undoubtedly, the degree of influence which they exercised with respect to the vassals of the crown varied according to their power and their proximity. Over Guienne and Toulouse, the four first Capets had every little authority; nor do they seem to have ever received assistance from them either in civil or national wars (1). With provinces nearer to their own domains, such as Normandy and Flanders, they were frequently engaged in alliance or hostility; but each seemed rather to proceed from the policy of independent states, than from the relation of a sovereign towards his subjects.

Robert. 996.

Henry I. 1031.
Philip. I. 1060.

It should be remembered that when the fiefs of Paris and Orleans are said to have been reunited by Hugh Capet to the crown, little more is understood than the feudal superiority over the vassals of these provinces. As the kingdom of Charlemagne's posterity was split into a number of great fiefs, so each of these contained many barons, possessing exclusive immunities within their own territories, waging war at their pleasure, administering justice to their military tenants and other subjects, and free from all controul beyond the conditions of the feudal compact (2). At the accession of Louis VI. in 1108, the cities of Paris, Orleans, and Bourges, with the immediately adjacent districts, formed the most considerable portion of the royal domain. A number of petty barons, with their fortified castles, intercepted the communication between these, and waged war against the king almost under the walls of his capital. It cost Louis a great deal of trouble to reduce the lords of Montlehery, and other places within a few miles of Paris. Under this prince, however, who had more activity than his predecessors, the royal authority considerably revived. From his reign we may date the systematic rivalry of the French and English monarchies. Hostilities had several times occurred between Philip I. and the two Williams; but the wars that began under Louis VI. lasted, with no long interruption, for three

Louis VI. 1108.

(1) I have not found any authority for supposing that the provinces south of the Loire contributed their assistance to the king in war, unless the following passage of Gulielmus Pictaviensis be considered as matter of fact, and not rather as a rhetorical flourish. He tells us, that a vast army was collected by Henry I. against the duke of Normandy: Burgundiam, Arverniam, atque Vasconiam properare videres horribiles ferro; immo vires tanti regni quantum in climata quatuor mundi patent cunctas. Recueil des Historiens, t. xi. p. 83. But we have the roll of the army which Louis VI. led against the Emperor Henry V. A. D. 1120, in a national war: and it was entirely composed of troops from Champagne, the Isle of France, the Orleannois, and other provinces north of the Loire. Velly, t. iii. p. 62. Yet this was a sort of convocation of the ban: Rex ut eum tota Francia sequatur, invitat. Even so late as the reign of Philip Augustus, in a list of the knights bannerets of France, though those of Britany, Flanders, Champagne, and Burgundy, besides the royal domains, are enumerated, no mention is made of the provinces beyond the Loire. Du Chesne, Script. Rerum Gallicarum, t. v. p. 262.

(2) In a subsequent chapter, I shall illustrate, at much greater length, the circumstances of the French monarchy with respect to its feudal vassals. It would be inconvenient to anticipate the subject at present, which is rather of a legal than narrative character.

centuries and a half, and form, indeed, the most leading feature of French history during the middle ages (1). Of all the royal vassals, the dukes of Normandy were the proudest and most powerful. Though they had submitted to do homage, they could not forget that they came in originally by force, and that in real strength they were fully equal to their sovereign. Nor had the conquest of England any tendency to diminish their pretensions (2).

Louis VII. 1137.

Louis VII. ascended the throne with better prospects than his father. He had married Eleanor, heiress of the great duchy of Guienne. But this union, which promised an immense accession of strength to the crown, was rendered unhappy by the levities of that princess. Repudiated by Louis, who felt rather as a husband than a king, Eleanor immediately married Henry II. of England; who already inheriting Normandy from his mother, and Anjou from his father, became possessed of more than one half of France, and an overmatch for Louis, even if the great vassals of the crown had been always ready to maintain its supremacy. One might venture perhaps to conjecture that the sceptre of France would eventually have passed from the Capets to the Plantagenets, if the vexatious quarrel with Becket at one time, and the successive rebellions fomented by Louis at a later period, had not embarrassed the great talents and ambitious spirit of Henry.

Philip Augustus. 1180

But the scene quite changed when Philip Augustus, son of Louis VII., came upon the stage. No prince comparable to him in systematic ambition and military enterprize had reigned in France since Charlemagne. From his reign the French monarchy dates the recovery of its lustre. He wrested from the count of Flanders the Vermandois, (that part of Picardy which borders on the Isle of France and Champagne (3),) and, subsequently, the county of Artois. But the most important conquests of Philip were obtained against the kings of England. Even Richard I., with all his prowess, lost ground in struggling against an adversary not less active, and more politic than himself.

Conquest of Normandy. 1203

But when John not only took possession of his brother's dominions, but confirmed his usurpation by the murder, as was very probably surmised, of the heir, Philip, artfully taking advantage of the general indignation, summoned him as his vassal to the court of his peers. John demanded a safe-conduct. Willingly, said Philip; let him come unmolested. And return? inquired the English envoy. If the judgment of his peers permit him, replied the king. By all the saints of France, he exclaimed, when further

(1) Velly, t. iii. p. 40.

(2) The Norman historians maintain, that their dukes did not owe any service to the king of France, but only simple homage, or, as it was called, per paragium. Recueil des Historiens, t. xi. pref. p. 161. They certainly acted upon this principle; and the manner in which they first came into the country is not very consistent with dependence.

(3) The original counts of Vermandois were descended from Bernard king. of Italy, grandson of Charlemagne: but their fief passed by the donation of Isabel, the last countess, to her husband the earl of Flanders, after her death in 1183. The principal towns of the Vermandois are St. Quentin and Péronne. Art de vérifier les Dates, t. ii, p. 700.

pressed, he shall not return unless acquitted. The bishop of Ely still remonstrated, that the duke of Normandy could not come without the king of England; nor would the barons of that country permit their sovereign to run the risk of death or imprisonment. What of that, my lord bishop? cried Philip. It is well known that my vassal the duke of Normandy acquired England by force. But if a subject obtains any accession of dignity, shall his paramount lord therefore lose his rights (1)?

It may be doubted whether, in thus citing John before his court, the king of France did not stretch his feudal sovereignty beyond its acknowledged limits. Arthur was certainly no immediate vassal of the crown for Britany; and though he had done homage to Philip for Anjou and Maine, yet a subsequent treaty had abrogated his investiture, and confirmed his uncle in the possession of those provinces (2). But the vigour of Philip, and the meanness of his adversary, cast a shade over all that might be novel or irregular in these proceedings. John, not appearing at his summons, was declared guilty of felony, and his fiefs confiscated. The execution of this sentence was not entrusted to a dilatory arm. Philip poured his troops into Normandy, and took town after town, while the king of England, infatuated by his own wickedness and cowardice, made hardly an attempt at defence. In two years Normandy, Maine, and Anjou were irrecoverably lost. Poitou and Guienne resisted longer: but the conquest of the first was completed by Louis VIII., successor of Philip, and the subjection of the second seemed drawing near, when the arms of Louis were diverted to different, but scarcely less advantageous objects.

Louis VIII. 1223

Affairs of Languedoc.

The country of Languedoc, subject to the counts of Toulouse, had been unconnected, beyond any other part of France, with the kings of the house of Capet. Louis VII. having married his sister to the reigning count, and travelled himself through the country, began to exercise some degree of authority, chiefly in confirming the rights of ecclesiastical bodies, who were vain, perhaps, of this additional sanction to the privileges which they already possessed (3). But the remoteness of their situation, with a difference in language and legal usages, still kept the people of this province apart from those of the north of France.

About the middle of the twelfth century, certain religious opi-

(1) Mat. Paris, p. 238. edit. 1684.

(2) The illegality of Philip's proceedings is well argued by Mably, Observations sur l'Histoire de France, l. iii. c. 6.

(3) According to the Benedictine historians, Vich and Vaissette, there is no trace of any act of sovereignty exercised by the kings of France in Languedoc from 955, when Lothaire confirmed a charter of his predecessor Raôul, in favour of the bishop of Puy, till the reign of Louis VII. (Hist. de Languedoc, t. ii. p. 88.) They have published, however, an instrument of Louis VI. in favour of the same church, confirming those of former princes. (Appendix, p. 473.) Neither the counts of Toulouse, nor any lord of the province, were present in a very numerous national assembly, at the coronation of Philip I. (Id. p. 200.) I do not recollect to have ever met with the name of the count of Toulouse as a subscribing witness to the charters of the first Capetian kings in the Recueil des Historiens, where many are published: though that of the duke of Guienne sometimes occurs.

nions, which it is not easy, nor, for our present purpose, material to define, but, upon every supposition, exceedingly adverse to those of the church (1), began to spread over Languedoc. Those who imbibed them have borne the name of Albigeois, though they were in no degree peculiar to the district of Albi. In despite of much preaching and some persecution, these errors made a continual progress; till Innocent III., in 1198, dispatched commissaries, the seed of the inquisition, with ample powers both to investigate and to chastise. Raymond VI., count of Toulouse, whether inclined towards the innovators, as was then the theme of reproach, or, as is more probable, disgusted with the insolent interference of the pope and his missionaries, provoked them to pronounce a sentence of excommunication against him. Though this was taken off, he was still suspected; and upon the assassination of one of the inquisitors, in which Raymond had no concern, Innocent published a crusade both against the count and his subjects, calling upon the king of France, and the nobility of that kingdom, to take up the cross, with all the indulgences usually held out as allurements to religious warfare. Though Philip would not interfere, a prodigious number of knights undertook this enterprize, led partly by ecclesiastics and partly by some of the first barons in France. It was prosecuted with every atrocious barbarity which superstition, the mother of crimes, could inspire. Languedoc, a country, for that age, flourishing and civilized, was laid waste by these desolators; her cities burned; her inhabitants swept away by fire and the sword. And this was to punish a fanaticism ten thousand times more innocent than their own, and errors, which, according to the worst imputations, left the laws of humanity and the peace of social life unimpaired (2).

1209

Crusade against the Albigeois.

The crusaders were commanded by Simon de Montfort, a man, like Cromwell, whose intrepidity, hypocrisy, and ambition, marked him for the hero of a holy war. The energy of such a mind, at the head of an army of enthusiastic warriors, may well account for successes which then appeared miraculous. But Montfort was cut off before he could realize his ultimate object, an independent principality; and Raymond was able to bequeath the inheritance of his ancestors to his son. Rome, however, was not yet appeased; upon some new pretence, she raised up a still more formidable enemy against the younger Raymond. Louis VIII. suffered himself to be diverted from the conquest of Guienne, to take the cross against the supposed patron

1222

(1) For the real tenets of the Languedocian sectaries, I refer to the last chapter of the present work, where the subject will be taken up again.

(2) The Albigensian war commenced with the storming of Bezières, and a massacre, wherein 15,000 persons, or, according to some narrations, 60,000, were put to the sword. Not a living soul escaped, as witnesses assure us. It was here that a Cistertian monk, who led on the crusaders, answered the inquiry, how the Catholics were to be distinguished from heretics: *Kill them all! God will know his own.* Besides Vaissette, see Sismondi, Littérature du Midi, t. i. p. 201.

of heresy. After a short and successful war, Louis, dying prematurely, left the crown of France to a son only twelve years old. But the count of Toulouse was still pursued, till, hopeless of safety in so unequal a struggle, he concluded a treaty upon very hard terms.

1229 By this he ceded the greater part of Languedoc; and giving his daughter in marriage to Alfonso, brother of Louis IX., confirmed to them, and to the king in failure of their descendants, the reversion of the rest, in exclusion of any other children whom he might have. Thus fell the ancient house of Toulouse, through one of those strange combinations of fortune, which thwart the natural course of human prosperity, and disappoint the plans of wise policy, and beneficent government (1).

Louis IX. 1226 The rapid progress of royal power under Philip Augustus and his son had scarcely given the great vassals time to reflect upon the change which it produced in their situation. The crown, with which some might singly have measured their forces, was now an equipoise to their united weight. And such an union was hard to be accomplished among men not always very sagacious in policy, and divided by separate interests and animosities. They were not, however, insensible to the crisis of their feudal liberties; and the minority of Louis IX., guided only by his mother, the regent Blanche of Castile, seemed to offer a favourable opportunity for recovering their former situation. Some of the most considerable barons, the counts of Britany, Champagne, and la Marche, had, during the time of Louis VIII., shewn an unwillingness to push the count of Toulouse too far, if they did not even keep up a secret understanding with him. They now broke out into open rebellion; but the address of Blanche detached some from the league, and her firmness subdued the rest. For the first fifteen years of Louis's reign, the struggle was frequently renewed; till repeated humiliations convinced the refractory, that the throne was no longer to be shaken. A prince so feeble as Henry III. was unable to afford them that aid from England, which, if his grandfather or son had then reigned, might probably have lengthened these civil wars.

His character. Its excellences; But Louis IX. had methods of preserving his ascendancy very different from military prowess. That excellent prince was perhaps the most eminent pattern of unswerving probity, and Christian strictness of conscience, that ever held the sceptre in any country. There is a peculiar beauty in the reign of St. Louis, because it shews the inestimable benefit which a virtuous king may confer on his people, without possessing any distinguished genius. For nearly half a century that he governed France, there is not the smallest want of moderation or disinterest-

(1) The best account of this crusade against the Albigeois is to be found in the third volume of Vaissette's History of Languedoc; the Benedictine spirit of mildness and veracity tolerably counterbalancing the prejudices of orthodoxy. Velly, Hist. de France, t. iii. has abridged this work.

edness in his actions; and yet he raised the influence of the monarchy to a much higher point than the most ambitious of his predecessors. To the surprize of his own and later times, he restored great part of his conquests to Henry III., whom he might naturally hope to have expelled from France. It would 1259 indeed have been a tedious work to conquer Guienne, which was full of strong places, and the subjugation of such a province might have alarmed the other vassals of his crown. But it is the privilege only of virtuous minds to perceive that wisdom resides in moderate counsels: no sagacity ever taught a selfish and ambitious sovereign to forego the sweetness of immediate power. An ordinary king, in the circumstances of the French monarchy, would have fomented, or, at least, have rejoiced in the dissensions which broke out among the principal vassals; Louis constantly employed himself to reconcile them. In this, too, his benevolence had all the effects of far-sighted policy. It had been the practice of his three last predecessors to interpose their mediation in behalf of the less powerful classes; the clergy, the inferior nobility, and the inhabitants of chartered towns. Thus the supremacy of the crown became a familiar idea; but the perfect integrity of St. Louis wore away all distrust, and accustomed even the most jealous feudatories to look upon him as their judge and legislator. And as the royal authority was hitherto shewn only in its most amiable prerogatives, the dispensation of favour, and the redress of wrong, few were watchful enough to remark the transition of the French constitution from a feudal league to an absolute monarchy.

It was perhaps fortunate for the display of St. Louis's virtues, that the throne had already been strengthened by the less innocent exertions of Philip Augustus and Louis VIII. A century earlier, his mild and scrupulous character, unsustained by great actual power, might not have inspired sufficient awe. But the crown was now grown so formidable, and Louis was so eminent for his firmness and bravery, qualities without which every other virtue would have been ineffectual, that no one thought it safe to run wantonly into rebellion, while his disinterested administration gave no one a pretext for it. Hence the latter part of his reign was altogether tranquil, and employed in watching over the public peace, and the security of travellers; administering justice personally, or by the best counsellors; and compiling that code of feudal customs, called the Establishments of St. Louis, which is the first monument of legislation, after the accession of the house of Capet. Not satisfied with the justice of his own conduct, Louis aimed at that act of virtue, which is rarely practised by private men, and had perhaps no example among kings, restitution. Commissaries were appointed to inquire what possessions had been unjustly annexed to the royal domain during the two last reigns. These were restored to the proprietors, or, where length of time had made it difficult to ascertain

the claimant, their value was distributed among the poor (1).

and defects.

It has been hinted already that all this excellence of heart in Louis IX. was not attended with that strength of understanding which is necessary, we must allow, to complete the usefulness of a sovereign. During his minority, Blanche of Castile, his mother, had filled the office of regent with great courage and firmness. But after he grew up to manhood, her influence seems to have passed the limit which gratitude and piety would have assigned to it; and, as her temper was not very meek or popular, exposed the king to some degree of contempt. He submitted even to be restrained from the society of his wife Margaret, daughter of Raymond, count of Provence, a princess of great virtue and conjugal affection. Joinville relates a curious story, characteristic of Blanche's arbitrary conduct, and sufficiently derogatory to Louis (2).

But the principal weakness of this king, which almost effaced all the good effects of his virtues, was superstition. It would be idle to sneer at those habits of abstemiousness and mortification, which were part of the religion of his age, and, at the worst, were only injurious to his own comfort. But he had other prejudices, which, though they may be forgiven, must never be defended. No one was ever more impressed than St. Louis with a belief in the duty of exterminating all enemies to his own faith. With these, he thought no layman ought to risk himself in the perilous ways of reasoning, but to make answer with his sword as stoutly as a strong arm and a fiery zeal could carry that argument (3). Though, fortunately for his fame, the persecution against the Albigeois, which had been the disgrace of his father's short reign, was at an end before he reached manhood, he suffered an hypocritical monk to establish a tribunal at Paris for the suppression of heresy, where many innocent persons suffered death.

But no events in Louis's life were more memorable than his two crusades, which lead us to look back on the nature and circumstances of that most singular phenomenon in European history. Though the crusades involved all the western nations of Europe, without belonging peculiarly to any one, yet as France was more distinguished than the rest in most of those enterprizes, I shall introduce the subject as a sort of digression from the main course of French history.

(1) Velly, tome v. p. 150. This historian has very properly dwelt for almost a volume on St. Louis's internal administration; it is one of the most valuable parts of his work. Joinville is a real witness, on whom, when we listen, it is impossible not to rely.—Collection des Mémoires relatifs à l'Histoire de France, tom. ii. p. 140—156.

(2) Collection des Mémoires, tome ii. p. 241.

(3) Aussi vous dis je, me dist le roy, que nul, si n'est grant clerc, et theologien parfaict, ne doit disputer aux Juifs; mais doit l'omme lay, quand il oit mesdire de la foy chrestienne, defendre la chose, non pas seulement des paroles, mais à bonne espée tranchant, et en frapper les mesdisans et mescreans à travers le corps, tant qu'elle y pourra entrer. Joinville, in Collection des Memoires, tom. i. p. 23. This passage, which shews a tolerable degree of bigotry, did not require to be strained farther still by Mosheim, vol. iii. p. 273. (edit. 1803.) I may observe by the way, that this writer, who sees nothing in Louis IX. except his intolerance, ought not to have charged him with issuing an edict in favour of the inquisition, in 1229, when he had not assumed the government.

The Crusades.

Even before the violation of Palestine by the Saracen arms, it had been a prevailing custom among the Christians of Europe to visit those scenes rendered interesting by religion, partly through delight in the effects of local association, partly in obedience to the prejudices or commands of superstition. These pilgrimages became more frequent in later times, in spite, perhaps in consequence, of the danger and hardships which attended them. For a while the Mohammedan possessors of Jerusalem permitted or even encouraged a devotion which they found lucrative; but this was interrupted, whenever the ferocious insolence with which they regarded all infidels got the better of their rapacity. During the eleventh century, when, from increasing superstition, and some particular fancies, the pilgrims were more numerous than ever, a change took place in the government of Palestine, which was over-run by the Turkish hordes from the north. These barbarians treated the visitors of Jerusalem with still greater contumely, mingling with their Mohammedan bigotry a consciousness of strength and courage, and a scorn of the Christians, whom they knew only by the debased natives of Greece and Syria, or by these humble and defenceless palmers. When such insults became known throughout Europe, they excited a keen sensation of resentment among nations equally courageous and devout; which, though wanting as yet any definite means of satisfying itself, was ripe for whatever favourable conjuncture might arise.

Twenty years before the first crusade, Gregory VII. had projected the scheme of embodying Europe in arms against Asia; a scheme worthy of his daring mind, and which, perhaps, was never forgotten by Urban II., who in every thing loved to imitate his great predecessor (1). This design of Gregory was founded upon the supplication of the Greek Emperor Michael, which was renewed by Alexius Comnenus to Urban with increased importunity. The Turks had now taken Nice, and threatened, from the opposite shore, the very walls of Constantinople. Every one knows whose hand held a torch to that inflammable mass of enthusiasm that pervaded Europe; the hermit of Picardy, who, roused by witnessed wrongs and imagined visions, journeyed from land to land, the apostle of an holy war. The preaching of Peter was powerfully seconded by Urban. In the councils of Piacenza and of Clermont, the deliverance of Jerusalem was eloquently recommended and exultingly undertaken. It is the will of God! was the tumultuous cry that broke from the heart and lips of the assembly at Clermont; and these words afford at once the most obvious and most certain explanation of the leading principle of the

1095

(1) Gregory addressed, in 1074, a sort of encyclic letter to all who would defend the Christian faith, enforcing upon them the duty of taking up arms against the Saracens, who had almost come up to the walls of Constantinople. No mention of Palestine is made in this letter. Labbé, Concilia, t. x. p. 44. St. Marc. Abrégé Chron. de l'Hist. de l'Italie, t. iii. p. 624.

which, in its best days, extended over great part of Mesopotamia, the Latin possessions never reached more than a few leagues from the sea. Within the barrier of Mount Libanus, their arms might be feared, but their power was never established; and the prophet was still invoked in the mosques of Aleppo and Damascus. The principality of Antioch to the north, the kingdom of Jerusalem, with its feudal dependencies of Tripoli and Tiberias to the south, were assigned, the one to Boemond, a brother of Robert Guiscard, count of Apulia, the other to Godfrey of Boulogne (1), whose extraordinary merit had justly raised him to a degree of influence with the chief crusaders, that has been sometimes confounded with a legitimate authority (2). In the course of a few years, Tyre, Ascalon, and the other cities upon the sea coast, were subjected by the successors of Godfrey on the throne of Jerusalem. But as their enemies had been stunned, not killed by the western storm, the Latins were constantly molested by the Mohammedans of Egypt and Syria. They were exposed, as the outposts of Christendom, with no respite and few resources. A second crusade, in which the emperor Conrad III. and Louis VII. of France were engaged, each with seventy thousand cavalry, made scarce any diversion; and that vast army wasted away in the passage of Natolia (3).

Second crusade. 1147

Decline of the Latin principalities in the East.

The decline of the Christian establishments in the East is ascribed by William of Tyre to the extreme viciousness of their manners, to the adoption of European arms by the orientals, and to the union of the Mohammedan principalities under a single chief (4). Without denying the operation of these causes, and especially the last, it is easy to perceive one more radical than all the three, the inadequacy of their means of self-defence. The kingdom of Jerusalem was guarded only, exclusive of European volunteers, by the feudal service of eight hundred and sixty-six knights, attended each by four archers on horseback, by a militia of five thousand and seventy-five burghers, and by a con-

(1) Godfrey never took the title of King of Jerusalem, not chusing, he said, to wear a crown of gold in that city where his Saviour had been crowned with thorns. Baldwin, Godfrey's brother, who succeeded him within two years, entitles himself, Rex Hierusalem, Latinorum primus. Will. Tyr. l. ii. c. 12.

(2) The heroes of the crusade are just like those of romance. Godfrey is not only the wisest, but the strongest man in the army. Perhaps Tasso has lost some part of this *physical* superiority for the sake of contrasting him with the imaginary Rinaldo. He cleaves a Turk in twain from the shoulder to the haunch. A noble Arab, after the taking of Jerusalem, requests him to try his sword upon a camel, when Godfrey with ease cuts off the head. The Arab, suspecting there might be something peculiar in the blade, desires him to do the same with *his* sword; and the hero obliges him by demolishing a second camel. Will. Tyr. l. ix. c. 22.

(3) Vertot puts the destruction in the second crusade at two hundred thousand men. Hist. de Malthe, p. 129: and from William of Tyre's language, there seems no reason to consider this an exaggeration. L. xvi. c. 19.

(4) L. xxi. c. 7. John of Vitry also mentions the change of weapons by the Saracens in imitation of the Latins, using the lances and coat of mail instead of bows and arrows, c. 92. But, according to a more ancient writer, part of Soliman's (the Kilidge Arslan of de Guignes) army in the first crusade was in armour, loricis et galeis et clypeis aureis valde armati. Albertus Aquensis, l. ii. c. 27. I may add to this a testimony of another kind, no less decisive. In the abbey of St. Denis, there were ten pictures in stained glass, representing sieges and battles in the first crusade. These were made by order of Suger, the minister of Louis VI., and consequently in the early part of the twelfth century. In many of them the Turks are painted in coats of mail, sometimes even in a plated cuirass. In others, they are quite unarmed, and in flowing robes. Montfaucon, Monumens de la Monarchie Française, t. i. pl. 50.

scription, in great exigencies, of the remaining population (1). William of Tyre mentions an army of one thousand three hundred horse and fifteen thousand foot, as the greatest which had ever been collected, and predicts the utmost success from it, if wisely conducted (2). This was a little before the irruption of Saladin. In the last fatal battle, Lusignan seems to have had somewhat a larger force (3). Nothing can more strikingly evince the ascendancy of Europe, than the resistance of these Frankish acquisitions in Syria during nearly two hundred years. Several of their victories over the Moslems were obtained against such disparity of numbers, that they may be compared with whatever is most illustrious in history or romance (4). These perhaps were less due to the descendants of the first crusaders, settled in the Holy Land (5), than to those volunteers from Europe, whom martial ardour and religious zeal impelled to the service. It was the penance commonly imposed upon men of rank for the most heinous crimes, to serve a number of years under the banner of the cross. Thus a perpetual supply of warriors was poured in from Europe; and in this sense, the crusades may be said to have lasted without intermission during the whole period of the Latin settlements. Of these defenders, the most renowned were the military orders of the Knights of the Temple and of the Hospital of St. John (6); instituted, the one in 1124, the other in 1118, for the sole purpose of protecting the Holy Land. The Teutonic order, established in 1190, when the kingdom of Jerusalem was falling, soon diverted its schemes of holy warfare to a very different quarter of the world. Large estates, as well in Palestine as throughout Europe, enriched the two former institutions; but the pride, rapaciousness, and misconduct of both, especially of the Templars, seem to have balanced the advantages derived from their valour (7). At length, the famous Saladin, usurping the throne of a feeble dynasty which had reigned in Egypt, broke in upon the Christians of Jerusalem; the king and the kingdom fell into his hands; nothing remained but a few strong towns upon the sea coast. 1187

(1) Gibbon, c. 98, note 123. Jerusalem itself was very thinly inhabited. For all the heathens, says William of Tyre, had perished in the massacre when the city was taken; or, if any escaped, they were not allowed to return: no heathen being thought fit to dwell in the holy city. Baldwin invited some Arabian Christians to settle in it.

(2) L. xxii. c. 27.

(3) A primo introitu Lathinorum in terram sanctam, says John de Vitry, nostri tot milites in uno prælio congregare nequiverunt. Erant enim mille ducenti milites loricati; peditum autem cum armis, arcubus et balistis, circiter viginti millia infaustæ expeditioni interfuisse dicuntur. Gesta Dei per Francos, p. 1128.

(4) A brief summary of these victories is given by John of Vitry, c. 93.

(5) Many of these were of a mongrel extraction, descended from a Frank parent on one side, and Syrian on the other. These were called Poulains, Pullani; and were looked upon as a mean degenerate race. Du Cange, Gloss. v. Pullani; and Observations sur Joinville, in Collection des Mémoires relatifs à l'Histoire de France, t. ii. p. 190.

(6) The St. John of Jerusalem was neither the Evangelist, nor yet the Baptist, but a certain Cypriot, sirnamed the Charitable, who had been patriarch of Alexandria.

(7) See a curious instance of the misconduct and insolence of the Templars, in William of Tyre, l. xx. c. 32. The Templars possessed nine thousand manors, and the knights of St. John nineteen thousand, in Europe. The latter were almost as much reproached as the Templars for their pride and avarice: L. xviii. c. 6.

Third crusade. 1189 These misfortunes roused once more the princes of Europe, and the third crusade was undertaken by three of her sovereigns, the greatest in personal estimation as well as dignity; by the emperor Frederic Barbarossa, Philip Augustus of France, and our own Richard Cœur de Lion. But this, like the preceding enterprize, failed of permanent effect; and those feats of romantic prowess, which made the name of Richard so famous both in Europe and Asia (1), proved only the total inefficacy of all exertions in an attempt so impraticable. Palestine was never the scene of another crusade. 1204 One great armament was diverted to the siege of Constantinople; 1216 and another wasted in fruitless attempts upon Egypt. The emperor Frederic II. afterwards procured the restoration of Jerusalem by the Saracens; but the Christian princes of Syria were unable to defend it, and their possessions were gradually reduced to the maritime towns. Aere, the last of these, was finally taken by storm in 1291; and its ruin closes the history of the Latin dominion in Syria, which Europe had already ceased to protect.

Crusades of St. Louis. 1248 The two last crusades were undertaken by St. Louis. In the first he was attended by 2,800 knights and 50,000 ordinary troops (2). He landed at Damietta in Egypt, for that country was now deemed the key of the Holy Land, and easily made himself master of the city. But advancing up the country, he found natural impediments as well as enemies in his way; the Turks assailed him with Greek fire, an instrument of warfare almost as surprizing and terrible as gunpowder; he lost his brother the count of Artois, with many knights, at Massoura, near Cairo; and began too late a retreat towards Damietta. Such calamities now fell upon this devoted army, as have scarce ever been surpassed; hunger and want of every kind, aggravated by an unsparing pestilence. At length the king was made prisoner, and very few of the army escaped the Turkish scymetar in battle or in captivity. Four hundred thousand livres were paid as a ransom for Louis. He returned to France, and passed near twenty years in the exercise of those virtues which are his best title to canonization. But the fatal illusions of superstition were still always at his heart; nor did it fail to be painfully observed by his subjects, that he still kept the cross upon his garment. 1270 His last expedition was originally designed for Jerusalem. But he had received some intimation, that the king of Tunis was desirous of embracing Christianity. That these intentions might be carried into effect, he sailed out of his way to the coast of Africa, and laid siege to that city. A fever here put an end

(1) When a Turk's horse started at a bush, he would chide him, Joinville says, with, Cuides tu qu'y soit le roi Richard? Women kept their children quiet with the threat of bringing Richard to them.

(2) The Arabian writers give him 9,500 knights, and 130,000 common soldiers. But I greatly prefer the authority of Joinville, who has twice mentioned the number of knights in the text. On Gibbon's authority, I put the main body at 50,000; but, if Joinville has stated this, I have missed the passage. Their vessels amounted to 1,800.

to his life, sacrificed to that ruling passion which never would have forsaken him. But he had survived the spirit of the crusades; the disastrous expedition to Egypt had cured his subjects, though not himself, of their folly (1); his son, after making terms with Tunis, returned to France; the Christians were suffered to lose what they still retained in the Holy Land; and though many princes, in subsequent ages, talked loudly of renewing the war, the promise, if it were ever sincere, was never accomplished.

Philip III. 1270.

Louis IX. had increased the royal domain by the annexation of several counties and other less important fiefs; but soon after the accession of Philip III. (sirnamed the Bold) it received a far more considerable augmentation. Alfonso, the late king's brother, had been invested with the county of Poitou, ceded by Henry III. together with part of Auvergne and of Saintonge; and held also, as has been said before, the remains of the great fief of Toulouse, in right of his wife Jane, heiress of Raymond VII. Upon his death, and that of his countess, which happened about the same time, the king entered into possession of all these territories. This acquisition brought the sovereigns of France into contact with new neighbours, the kings of Aragon and the powers of Italy. The first great and lasting foreign war which they carried on, was that of Philip III. and Philip IV. against the former kingdom, excited by the insurrection of Sicily. Though effecting no change in the boundaries of their dominions, this war may be deemed a sort of epoch in the history of France and Spain, as well as in that of Italy, to which it more peculiarly belongs.

1271

1285

Philip the Fair. 1285

There still remained five great and ancient fiefs of the French crown. Champagne, Guienne, Flanders, Burgundy, and Britany. But Philip IV., usually called the Fair, married the heiress of the first, a little before his father's death; and although he governed that county in her name, without pretending to reunite it to the royal domain, it was at least, in a political sense, no longer a part of the feudal body. With some of his other vassals, Philip used more violent methods. A parallel might be drawn between this prince and Philip Augustus. But while in ambition, violence of temper, and unprincipled rapacity, as well as in

(1) The refusal of Joinville to accompany the king in this second crusade is very memorable, and gives us an insight into the bad effects of both expeditions. Le Roy de France et le Roy de Navarre me pressoient fort de me croiser, et entreprendre le chemin du pelerinage de la croix. Mais je leur respondi, que tandis que j'avoie esté oultremer au service de Dieu, que les gens et officiers du Roy de France avoient trop grevé et foullé mes subjets, tant qu'ils en estoient apovris; tellement que jamés il ne seroit, que eulx et moy ne nous en sortissons. Et veoie clerement, si je me mectoie au pelerinage de la croix, que ce seroit la totale destruction de mesdiz povres subjets. Depuis ouyje dire a plusieurs, que ceux qui luy conseillerent l'entreprinse de la croix, firent un trez grant mal, et pecherent mortellement. Car tandis qu'il fust au royaume de France, tout son royaume vivoit en paix, et regnoit justice. Et incontinent qu'il en fust ors, tout commença a décliner et a empirer.—T. ii. p. 158.

In the Fabliaux of Le Grand d'Aussy, we have a neat poem by Rutubœuf, a writer of St. Louis's age, in a dialogue between a crusader and a non-crusader, wherein, though he gives the last word to the former, it is plain that he designed the opposite scale to preponderate. —T. ii. p. 163.

Aggrandizement of the French monarchy under his reign.

the success of their attempts to establish an absolute authority, they may be considered as nearly equal, we may remark this difference, that Philip the Fair, who was destitute of military talents, gained those ends by dissimulation, which his predecessor had reached by force.

The duchy of Guienne, though somewhat abridged of its original extent, was still by far the most considerable of the French fiefs; even independently of its connection with England (1). Philip, by dint of perfidy, and by the egregious incapacity of Edmund, brother of Edward I., contrived to obtain, and to keep for several years, the possession of this great province. A quarrel among some French and English sailors having provoked retaliation, till a sort of piratical war commenced between the two countries, Edward, as duke of Guienne, was summoned into the king's court to answer for the trespasses of his subjects. Upon this, he despatched his brother to settle terms of reconciliation, with fuller powers than should have been entrusted to so credulous a negociator. Philip so outwitted this prince, through a fictitious treaty, as to procure from him the surrender of all the fortresses in Guienne. He then threw off the mask, and after again summoning Edward to appear, pronounced the confiscation of his fief (2). This business is the greatest blemish in the political character of Edward. But his eagerness about the acquisition of Scotland rendered him less sensible to the danger of a possession in many respects more valuable; and the spirit of resistance among the English nobility, which his arbitrary measures had provoked, broke out very opportunely for Philip, to thwart every effort for the recovery of Guienne by arms. But after repeated suspensions of hostilities, a treaty was finally concluded, by which Philip restored the province, on the agreement of a marriage between his daughter Isabel and the heir of England.

1292

1303

To this restitution he was chiefly induced by the ill success that attended his arms in Flanders, another of the great fiefs which this ambitious monarch had endeavoured to confiscate. We have not perhaps as clear evidence of the original injustice of his proceedings towards the count of Flanders, as in the case of Guienne; but he certainly twice detained his person, once after drawing him on some pretext to his court, and again, in violation of the faith pledged by his generals. The Flemings made, however, so vigorous a resist-

(1) Philip was highly offended that instruments made in Guienne should be dated by the year of Edward's reign, and not of his own. This almost sole badge of sovereignty had been preserved by the kings of France during all the feudal ages. A struggle took place about it, which is recorded in a curious letter from John de Greilli to Edward. The French court at last consented to let dates be thus expressed: Actum fuit, regnante P. rege Franciæ, E. rege Angliæ tenente ducatum Aquitaniæ. Several precedents were shown by the English, where the counts of Toulouse had used the form, Regnante A. comite Tolosæ. Rymer, t. ii. p. 1083. As this is the first time that I quote Rymer, it may be proper to observe that my references are to the London edition, the paging of which is preserved on the margin of that printed at the Hague.

(2) In the view I have taken of this transaction, I have been guided by several instruments in Rymer, which leave no doubt on my mind. Velly of course represents the matter more favourably for Philip.

ance, that Philip was unable to reduce that small country; and in one famous battle at Courtray, they discomfited a powerful army with that utter loss and ignominy to which the undisciplined impetuosity of the French nobles was pre-eminently exposed (1). 1302

Two other acquisitions of Philip the Fair deserve notice; that of the counties of Angouleme and la Marche, upon a sentence of forfeiture (and, as it seems, a very harsh one) passed against the reigning count: and that of the city of Lyons, and its adjacent territory, which had not even feudally been subject to the crown of France, for more than three hundred years. Lyons was the dowry of Matilda, daughter of Louis IV., on her marriage with Conrad, king of Burgundy, and was bequeathed with the rest of that kingdom by Rodolph, in 1032, to the empire. Frederic Barbarossa conferred upon the archbishop of Lyons all regalian rights over the city, with the title of Imperial Vicar. France seems to have had no concern with it, till St. Louis was called in as a mediator in disputes between the chapter and the city, during a vacancy of the see, and took the exercise of jurisdiction upon himself for the time. Philip III., having been chosen arbitrator in similar circumstances, insisted, before he would restore the jurisdiction, upon an oath of fealty from the new archbishop. This oath, which could be demanded, it seems, by no right but that of force, continued to be taken, till, in 1310, an archbishop resisting what he had thought an usurpation, this city was besieged by Philip IV., and, the inhabitants not being unwilling to submit, was finally united to the French crown (2).

Louis X. 1314

Philip the Fair left three sons, who successively reigned in France; Louis, sirnamed Hutin, Philip the Long, and Charles the Fair; with a daughter, Isabel, married to Edward II. of England. Louis, the eldest, survived his father little more than a year, leaving one daughter, and his queen pregnant. The circumstances that ensued require to be accurately stated. Louis had possessed, in right of his mother, the kingdom of Navarre, with the counties of Champagne and Brie. Upon his death, Philip, his next brother, assumed the regency both of France and Navarre; and not long afterwards entered into a treaty with Eudes, duke of Burgundy, uncle of the Princess Jane, Louis's daughter, by which her eventual rights to the succession were to be regulated. It was agreed that in case the queen should be delivered of a daughter, these two princesses, or the survivor of them, should take the grandmother's inheritance, Navarre and Champagne, on releasing all claim to the throne of France. But this was not to take place till their age of consent,

Question of Salic Law. Philip V. 1315.

(1) The Flemings took at Courtray 4,000 pair of gilt spurs, which were only worn by knights. These Velly, happily enough, compares to Hannibal's three bushels of gold rings at Cannæ.

(2) Velly, t. vii. p. 404. For a more precise account of the political dependence of Lyons and its district, see l'Art de vérifier les Dates, t. ii. p. 469.

when, if they should refuse to make such renunciation, their claim was to remain, and *right to be done to them therein;* but, in return, the release made by Philip of Navarre and Champagne, was to be null. In the mean time, he was *to hold the government* of France, Navarre, and Champagne, receiving homage of vassals in all these countries as *governor;* saving the right of a male heir to the late king, in the event of whose birth the treaty was not to take effect (1).

This convention was made on the 17th of July, 1316; and on the 15th of November, the queen brought into the world a son, John I. (as some called him) who died in four days. The conditional treaty was now become absolute; in spirit, at least, if any cavil might be raised about the expression; and Philip was, by his own agreement, precluded from taking any other title than that of regent or governor, until the princess Jane should attain the age to concur in or disclaim the provisional contract of her uncle. Instead of this, however, he procured himself to be consecrated at Rheims; though, on account of the avowed opposition of the duke of Burgundy, and even of his own brother Charles, it was thought prudent to shut the gates during the ceremony, and to dispose guards throughout the town.

Jan. 6, 1317.

Upon his return to Paris, an assembly composed of prelates, barons, and burgesses of that city, was convened, who acknowledged him as their lawful sovereign, and, if we may believe an historian, expressly declared, that a woman was incapable of succeeding to the crown of France (2). The duke of Burgundy, however, made a show of supporting his niece's interests, till, tempted by the prospect of a marriage with the daughter of Philip, he shamefully betrayed her cause, and gave up in her name, for an inconsiderable pension, not only her disputed claim to the whole monarchy, but her unquestionable right to Navarre and Champagne (3). I have been rather minute in stating these details, because the transaction is misrepresented by every historian, not excepting those who have written since the publication of the documents which illustrate it (4).

In this contest, every way memorable, but especially on account of that which sprung out of it, the exclusion of females from the throne of France was first publicly discussed. The French writers almost unanimously concur in asserting, that such an exclusion was built upon a fundamental maxim of their government. No written law, nor even, so far as I know, the direct testimony of any ancient writer, has been brought forward to confirm this posi-

(1) Hist. de Charles le Mauvais, par Sécousse, vol. ii. p. 2.

(2) Tunc etiam declaratum fuit, quod in regno Franciæ mulier non succedit. Contin. Gul. Nangis, in Spicilegio d'Achery, tom. iii. This monk, without talents, and probably without private information, is the sole contemporary historian of this important period. He describes the assembly which confirmed Philip's possession of the crown; —quamplures proceres et regni nobiles ac magnates una cum plerisque prælatis et burgensibus Parisiensis civitatis.

(3) Hist. de Charles le Mauvais, t. ii. p. 6. Jane and her husband, the count of Evreux, recovered Navarre after the death of Charles the Fair.

(4) Velly, who gives several proofs of disingenuousness in this part of his history, mutilates the treaty of the 17th of July, 1316, in order to conceal Philip the Long's breach of faith towards his niece.

tion. For as to the text of the Salic law, which was frequently quoted, and has indeed given a name to this exclusion of females, it can only by a doubtful and refined analogy be considered as bearing any relation to the succession of the crown. It is certain, nevertheless, that, from the time of Clovis, no woman had ever reigned in France; and although not an instance of a sole heiress had occurred before, yet some of the Merovingian kings left daughters, who might, if not rendered incapable by their sex, have shared with their brothers in partitions then commonly made (1). But on the other hand, these times were gone quite out of memory, and France had much in the analogy of her existing usages to reconcile her to a female reign. The crown resembled a great fief; and the great fiefs were universally capable of descending to women. Even at the consecration of Philip himself, Maud, countess of Artois, held the crown over his head among the other peers (2). And it was scarcely beyond the recollection of persons living, that Blanche had been legitimate regent of France during the minority of St. Louis.

For these reasons and much more from the provisional treaty concluded between Philip and the duke of Burgundy, it may be fairly inferred, that the Salic law, as it was called, was not so fixed a principle at that time as has been contended. But however this may be, it received, at the accession of Philip the Long, a sanction which subsequent events more thoroughly confirmed. Philip himself leaving only three daughters, his brother Charles mounted the throne; and upon his death, the rule was so unquestionably established, that his only daughter was excluded by the count of Valois, grandson of Philip the Bold. This prince first took the regency, the queen dowager being pregnant, and upon her giving birth to a daughter, was crowned king. No competitor or opponent appeared in France; but one more formidable than any whom France could have produced, was awaiting the occasion to prosecute his imagined right with all the resources of valour and genius, and to carry desolation over that great kingdom with as little scruple as if he was preferring a suit before a civil tribunal.

Charles IV. 1322
Philip of Valois. 1328

From the moment of Charles IV.'s death, Edward III. of England buoyed himself up with a notion of his title to the crown of France, in right of his mother Isabel, sister to the

Claim of Edward III.

(1) The treaty of Andely, in 587, will be found to afford a very strong presumption that females were at that time excluded from reigning in France. Greg. Turon. l. ix.

(2) The continuator of Nangis says indeed of this: de quo aliqui indignati fuerunt. But these were probably the partisans of her nephew Robert, who had been excluded by a judicial sentence of Philip IV. on the ground that the right of representation did not take place in Artois; a decision considered by many as unjust. Robert subsequently renewed his appeal to the court of Philip of Valois: but unhappily for himself, yielded to the temptation of forging documents in support of a claim which seems to have been at least plausible without such aid. This unwise dishonesty, which is not without parallel in more private causes, not only ruined his pretensions to the county of Artois, but produced a sentence of forfeiture, and even of capital punishment against himself. See a pretty good account of Robert's process in Velly, t. viii. p. 262.

three last kings. We can have no hesitation in condemning the injustice of this pretension. Whether the Salic law were or were not valid, no advantage could be gained by Edward. Even if we could forget the express or tacit decision of all France, there stood in his way Jane, the daughter of Louis X., three of Philip the Long, and one of Charles the Fair. Aware of this, Edward set up a distinction, that, although females were excluded from succession, the same rule did not apply to their male issue; and thus, though his mother Isabel could not herself become queen of France, she might transmit a title to him. But this was contrary to the commonest rules of inheritance: and if it could have been regarded at all, Jane had a son, afterwards the famous king of Navarre, who stood one degree nearer to the crown than Edward.

It is asserted in some French authorities, that Edward preferred a claim to the regency, immediately after the decease of Charles the Fair, and that the States General, or at least the peers of France, adjudged that dignity to Philip de Valois. Whether this be true or not, it is clear that he entertained projects of recovering his right as early, though his youth and the embarrassed circumstances of his government threw insuperable obstacles in the way of their execution (1). He did liege homage therefore to Philip for Guienne, and for several years, while the affairs of Scotland engrossed his attention, gave no sign of meditating a more magnificent enterprize. As he advanced in manhood, and felt the consciousness of his strength, his early designs grew mature, and produced a series of the most important and interesting revolutions in the fortunes of France. These will form the subject of the ensuing pages.

(1) Letters of Edward III. addressed to certain nobles and towns in the south of France, dated March 28, 1328, four days before the birth of Charles IV.'s posthumous daughter, intimate this resolution. Rymer, vol. iv. p. 344. et seq. But an instrument, dated at Northampton, on the 16th of May, is decisive: This is a procuration to the bishops of Worcester and Litchfield, to demand, and take possession of the kingdom of France, "in our name, which kingdom has devolved and appertains to us as to the right heir." P. 354. To this mission Archbishop Stratford refers, in his vindication of himself from Edward's accusation of treason in 1340; and informs us that the two bishops actually proceeded to France, though without mentioning any further particulars. Novit enim qui nihil ignorat, quod cum quæstio de regno Franciæ post mortem regis Caroli, fratris serenissimæ matris vestræ, in parliamento tunc apud Northampton celebrato, tractata discussaque fuisset; quodque idem regnum Franciæ ad vos hæreditario jure extiterat legitimè devolutum; et super hoc fuit ordinatum, quod duo episcopi, Wigorniensis tunc, nunc autem Wintoniensis, ac Coventriensis et Lichfeldensis in Franciam dirigerent gressus suos, nomineque vestro regnum Franciæ vindicarent et prædicti Philippi de Valesio coronationem pro viribus impedirent; qui juxta ordinationem prædictam legationem iis injunctam tunc assumentes, gressus suos versus Franciam direxerunt; quæ quidem legatio maximam guerræ præsentis materiam ministravit. Wilkins. Concilia, t. i. p. 664.

There is no evidence in Rymer's Fœdera to corroborate Edward's supposed claim to the regency of France upon the death of Charles IV.; and it is certainly suspicious, that no appointment of ambassadors or procurators for this purpose should appear in so complete a collection of documents. The French historians generally assert this, upon the authority of the continuator of William of Nangis, a nearly contemporary, but not always well informed writer. It is curious to compare the four chief English historians. Rapin affirms both the claim to the regency, on Charles IV.'s death, and that to the kingdom, after the birth of his daughter. Carte, the most exact historian we have, mentions the latter, and is silent as to the former. Hume passes over both, and intimates that Edward did not take any steps in support of his pretensions in 1328. Henry gives the supposed trial of Edward's claim to the regency before the States General at great length, and makes no allusion to the other, so indisputably authenticated in Rymer. It is, I think, most probable that the two bishops never made the formal demand of the throne as they were directed by their instructions. Stratford's expressions seem to imply that they did not.

PART II.

War of Edward III. in France—Causes of his Success—Civil Disturbances of France—Peace of Bretigni—its Interpretation considered—Charles V.—Renewal of the War—Charles VI.—his Minority and Insanity—Civil Dissensions of the Parties of Orleans and Burgundy—Assassination of both these Princes—Intrigues of their Parties with England under Henry IV.—Henry V. invades France—Treaty of Troyes—State of France in the first Years of Charles VII.—Progress and subsequent Decline of the English Arms—their Expulsion from France—Change in the Political Constitution—Louis XI.—his Character—Leagues formed against him—Charles duke of Burgundy—his Prosperity and Fall—Louis obtains Possession of Burgundy—his Death—Charles VIII.—Acquisition of Britany.

No war had broken out in Europe, since the fall of the Roman Empire, so memorable as that of Edward III. and his successors against France, whether we consider its duration, its object, or the magnitude and variety of its events. It was a struggle of one hundred and twenty years, interrupted but once by a regular pacification, where the most ancient and extensive dominion in the civilized world was the prize, twice lost and twice recovered in the conflict, while individual courage was wrought up to that high pitch, which it can seldom display, since the regularity of modern tactics has chastised its enthusiasm, and levelled its distinctions. There can be no occasion to dwell upon the events of this war which are familiar to almost every reader; it is rather my aim to develope and arrange those circumstances, which, when rightly understood, give the clue to its various changes of fortune.

War of Edward III. in France.

France was, even in the fourteenth century, a kingdom of such extent and compactness of figure, such population and resources, and filled with so spirited a nobility, that the very idea of subjugating it by a foreign force must have seemed the most extravagant dream of ambition (1). Yet in the course of about twenty years of war, this mighty nation was reduced to the lowest state of exhaustion, and dismembered of considerable provinces by an ignominious peace. What was the combination of political causes, which brought about so strange a revolution, and, though not realizing Edward's hopes to their extent, redeemed them from the imputation of rashness in the judgment of his own and succeeding ages?

Causes of his success

The first advantage which Edward III. possessed in this contest, was derived from the splendour of his personal character, and from the still more eminent

Character of Edward III. and his son.

(1) The pope (Benedict XII.) wrote a strong letter to Edward (March, 1340), dissuading him from taking the title and arms of France, and pointing out the impossibility of his ever succeeding. I have no doubt but that this was the common opinion. But the Avignon popes were very subservient to France. Clement VI., as well as his predecessor, Benedict XII., threatened Edward with spiritual arms. Rymer, t. v. p. 88. and 465. It required Edward's spirit and steadiness to despise these menaces. But the time, when they were terrible to princes, was rather passed by; and the Holy See never ventured to provoke the king, who treated the church, throughout his reign, with admirable firmness and temper.

virtues of his son. Besides prudence and military skill, these great princes were endowed with qualities peculiarly fitted for the times in which they lived. Chivalry was then in its zenith; and in all the virtues which adorned the knightly character, in courtesy, munificence, gallantry, in all delicate and magnanimous feelings, none were so conspicuous as Edward III. and the Black Prince. As later princes have boasted of being the best gentlemen, they might claim to be the prowest knights in Europe; a character not quite dissimilar, yet of more high pretension. Their court was, as it were, the sun of that system, which embraced the valour and nobility of the Christian world; and the respect which was felt for their excellencies, while it drew many to their side, mitigated in all the rancour and ferociousness of hostility. This war was like a great tournament, where the combatants fought indeed *à outrance,* but with all the courtesy and fair play of such an entertainment, and almost as much for the honour of their ladies. In the school of the Edwards were formed men not inferior in any nobleness of disposition to their masters; Manni, and the Captal de Buch, Felton, Knollys and Calverley, Chandos, and Lancaster. On the French side, especially after du Guesclin came on the stage, these had rivals almost equally deserving of renown. If we could forget, what never should be forgotten, the wretchedness and devastation that fell upon a great kingdom, too dear a price for the display of any heroism, we might count these English wars in France among the brightest periods in history.

Character of Philip VI. and John.

Philip of Valois, and John his son, shewed but poorly in comparison with their illustrious enemies. Yet they had both considerable virtues; they were brave (1), just, liberal, and the latter, in particular, of unshaken fidelity to his word. But neither was beloved by his subjects; the misgovernment and extortion of their predecessors during half a century had alienated the public mind, and rendered their own taxes and debasement of the coin intolerable. Philip was made by misfortune, John by nature, suspicious and austere; and although their most violent acts seem never to have wanted absolute justice, yet they were so ill conducted, and of so arbitrary a complexion, that they greatly impaired the reputation, as well as interests, of these monarchs. In the execution of Clisson under Philip, in that of the Connétable d'Eu under John, and still more in that of Harcourt, even in the imprisonment of the king of Navarre, though every one of these might have been guilty of treasons, there were cir-

(1) The bravery of Philip is not questioned. But a French historian, in order, I suppose, to enhance this quality, has presumed to violate truth in an extraordinary manner. The challenge sent by Edward, offering to decide his claim to the kingdom by single combat, is well known. Certainly it conveys no imputation on the king of France to have declined this unfair proposal. But Velly has represented him as accepting it, on condition that Edward would stake the crown of England against that of France; an interpolation which may be truly called audacious, since not a word of this is in Philip's letter, preserved in Rymer, which the historian had before his eyes, and actually quotes upon the occasion. Hist. de France, t. viii. p. 382.

cumstances enough to exasperate the disaffected, and to strengthen the party of so politic a competitor as Edward.

Resources of the king of England.

Next to the personal qualities of the king of England, his resources in this war must be taken into the account. It was after long hesitation that he assumed the title and arms of France, from which, unless upon the best terms, he could not recede without loss of honour (1). In the mean time he strengthened himself by alliances with the emperor, with the cities of Flanders, and with most of the princes in the Netherlands and on the Rhine. Yet I do not know that he profited much by these conventions, since he met with no success, till the scene of the war was changed from the Flemish frontier to Normandy and Poitou. The troops of Hainault alone were constantly distinguished in his service.

But his intrinsic strength was at home. England had been growing in riches since the wise government of his grandfather, Edward I., and through the market opened for her wool with the manufacturing towns of Flanders. She was tranquil within; and her northern enemy, the Scotch, had been defeated and quelled. The parliament, after some slight precautions against a very probable effect of Edward's conquest of France, the reduction of their own island into a province, entered, as warmly as improvidently, into his quarrel. The people made it their own, and grew so intoxicated with the victories of this war, that for some centuries the injustice and folly of the enterprize do not seem to have struck the gravest of our countrymen.

Excellence of the English armies.

There is, indeed, ample room for national exultation at the names of Crecy, Poitiers, and Azincourt. So great was the disparity of numbers upon those famous days, that we cannot, with the French historians, attribute the discomfiture of their hosts merely to mistaken tactics and too impetuous valour. They yielded rather to that intrepid steadiness in danger, which had already become the characteristic of our English soldiers, and which, during four centuries, has ensured their superiority, whenever ignorance or infatuation has not led them into the field. But these victories, and the qualities that secured

(1) The first instrument in which Edward disallows the title of Philip, is his convention with the emperor Louis of Bavaria, wherein he calls him, nunc pro rege Francorum se gerentem. The date of this is August 26, 1337; yet on the 28th of the same month, another instrument gives him the title of king, and the same occurs in subsequent instances. At length we have an instrument of procuration to the duke of Brabant, October 7, 1337, empowering him to take possession of the crown of France in the name of Edward: attendentes inclitum regnum Franciæ ad nos fore jure successionis legitimè devolutum. Another of the same date appoints the said duke his vicar-general and lieutenant of France. The king assumed in this commission the title, Rex Franciæ et Angliæ; in other instruments he calls himself, Rex Angliæ et Franciæ. It was necessary to obviate the jealousy of the English, who did not, in that age admit the precedence of France. Accordingly, Edward had two great seals, on which the two kingdoms were named in a different order. But, in the royal arms, those of France were always in the first quarter, as they continued to be until the accession of the house of Brunswick.

Probably Edward III. would not have entered into the war, merely on account of his claim to the crown. He had disputes with Philip about Guienne; and that prince had, rather unjustifiably, abetted Robert Bruce in Scotland. I am not inclined to lay any material stress upon the instigation of Robert of Artois.

them, must chiefly be ascribed to the freedom of our constitution, and to the superior condition of the people. Not the nobility of England, not the feudal tenants won the battles of Crecy and Poitiers; for these were fully matched in the ranks of France; but the yeomen, who drew the bow with strong and steady arms, accustomed to its use in their native fields, and rendered fearless by personal competence and civil freedom. It is well known, that each of the three great victories was due to our archers, who were chiefly of the middle class, and attached, according to the system of that age, to the knights and squires who fought in heavy armour with the lance. Even at the battle of Poitiers, of which our country seems to have the least right to boast, since the greater part of the Black Prince's small army was composed of Gascons, the merit of the English bowmen is strongly attested by Froissart (1).

Condition of France after the battle of Poitiers.

Yet the glorious termination to which Edward was enabled, at least for a time, to bring the contest, was rather the work of fortune than of valour and prudence. Until the battle of Poitiers, he had made no progress towards the conquest of France. That country was too vast, and his army too small, for such a revolution. The victory of Crecy gave him nothing but Calais; a post of considerable importance in war and peace, but rather adapted to annoy than to subjugate the kingdom. But at Poitiers he obtained the greatest of prizes, by taking prisoner the king of France. Not only the love of freedom tempted that prince to ransom himself by the utmost sacrifices, but his captivity left France defenceless, and seemed to annihilate the monarchy itself. The government was already odious; a spirit was awakened in the people, which might seem hardly to belong to the fourteenth century; and the convulsions of our own time are sometimes strongly paralleled by those which succeeded the battle of Poitiers. Already the States General had established a fundamental principle, that no resolution could be passed as the opinion of the whole, unless each of the three orders concurred in its adoption (2). The right of levying and of regulating the collection of taxes was recognized. But that assembly which met at Paris immediately after the battle, went far greater lengths in the reform and controul of government. From the time of Philip the Fair, the abuses natural to arbitrary power had harassed the people. There now seemed an opportunity of redress; and however seditious, or even treasonable, may have been the motives of those who guided this assembly of the States, especially the famous Marcel, it is clear that many of their reformations tended to liberty and the public good (5).

(1) Au vray dire, les archers d'Angleterre faisoient à leurs gens grant avantage. Car ils tiroyent tant espessement, que les François ne sçavoyent de quel costé entendre, qu'ils ne fussent consuyvis de trayt; et s'avancoyent toujours ces Anglois, et petit à petit enqueroyent terre. Bart. I. c. 162.

(2) Ordonnances des Rois de France, t. ii.

(3) I must refer the reader onward to the next chapter, for more information on this subject. This separation is inconvenient, but it arose indispensably out of my arrangement, and prevented greater inconveniences.

But the tumultuous scenes which passed in the capital, sometimes heightened into civil war, necessarily distracted men from the common defence against Edward. These tumults were excited, and the distraction increased, by Charles, king of Navarre, sirnamed the Bad, to whom the French writers have, not perhaps unjustly, attributed a character of unmixed and inveterate malignity. He was grandson of Louis Hutin, by his daughter Jane, and, if Edward's pretence of claiming through females could be admitted, was a nearer heir to the crown; the consciousness of which seems to have suggested itself to his depraved mind as an excuse for his treacheries, though he could entertain very little prospect of asserting the claim against either contending party. John had bestowed his daughter in marriage on the king of Navarre; but he very soon gave a proof of his character, by procuring the assassination of the king's favourite, Charles de la Cerda. An irreconcileable enmity was the natural result of this crime. Charles became aware that he had offended beyond the possibility of forgiveness, and that no letters of pardon, nor pretended reconciliation, could secure him from the king's resentment. Thus, impelled by guilt into deeper guilt, he entered into alliances with Edward, and fomented the seditious spirit of Paris. Eloquent and insinuating, he was the favourite of the people, whose grievances he affected to pity, and with whose leaders he intrigued. As his paternal inheritance, he possessed the county of Evreux in Normandy. The proximity of this to Paris created a formidable diversion in favour of Edward III. and connected the English garrisons of the North with those of Poitou and Guienne.

There is no affliction which did not fall upon France during this miserable period. A foreign enemy was in the heart of the kingdom, the king a prisoner, the capital in sedition, a treacherous prince of the blood in arms against the sovereign authority. Famine, the sure and terrible companion of war, for several years desolated the country. In 1348, a pestilence, the most extensive and unsparing of which we have any memorial, visited France as well as the rest of Europe, and consummated the work of hunger and the sword (1). The companies of adventure, mercenary troops in the service of John or Edward, finding no immediate occupation after the truce of 1357, scattered themselves over the country, in search of pillage. No force existed sufficiently powerful to check these robbers in their career. Undismayed by superstition, they

(1) A full account of the ravages made by this memorable plague may be found in Matteo Villani, the second of that family who wrote the history of Florence. His brother and predecessor, John Villani, was himself a victim to it. The disease began in the Levant about 1346; from whence Italian traders brought it to Sicily, Pisa, and Genoa. In 1348, it passed the Alps and spread over France and Spain; in the next year it reached Britain, and in 1350 laid waste Germany and other northern states; lasting generally about five months in each country. At Florence, more than three out of five died. Muratori, Script. Rerum Italicarum, t. xiv. p. 12. The stories of Boccacio's Decamerone, as is well known, are supposed to be related by a society of Florentine ladies and gentlemen retired to the country during this pestilence.

compelled the pope to redeem himself in Avignon by the payment of forty thousand crowns (1). France was the passive victim of their licence, even after the pacification concluded with England, till some were diverted into Italy, and others led by du Guesclin to the war of Castile. Impatient of this wretchedness, and stung by the insolence and luxury of their lords, the peasantry of several districts broke out into a dreadful insurrection. This was called the Jacquerie, from the cant phrase Jacques bon homme, applied to men of that class; and was marked by all the circumstances of horror incident to the rising of an exasperated and unenlightened populace (2).

1358

Subdued by these misfortunes, though Edward had made but slight progress towards the conquest of the country, the regent of France, afterwards Charles V., submitted to the peace of Bretigni. By this treaty, not to mention less important articles, all Guienne, Gascony, Poitou, Saintonge, the Limousin, and the Angoumois, as well as Calais, and the county of Ponthieu, were ceded in full sovereignty to Edward; a price abundantly compensating his renunciation of the title of France, which was the sole concession stipulated in return. Every care seems to have been taken to make the cession of these provinces complete. The first six articles of the treaty expressly surrender them to the king of England. By the seventh, John and his son engage to convey within a year from the ensuing Michaelmas all their rights over them, and especially those of sovereignty and feudal appeal. The same words are repeated still more emphatically in the eleventh and some other articles. The twelfth stipulates the exchange of mutual renunciations; by John, of all right over the

Peace of Bretigni.

1360

(1) Froissart, p. 187. This troop of banditti was commanded by Arnaud de Cervole, sirnamed l'Archiprêtre, from a benefice which, although a layman, he possessed, according to the irregularity of those ages. See a memoir on the life of Arnaud de Cervole, in the twenty-fifth volume of the Academy of Inscriptions.

(2) The second continuator of Nangis, a monk of no great abilities, but entitled to notice as our most contemporary historian, charges the nobility with spending the money raised upon the people by oppressive taxes, in playing at dice "et alios indecentes jocos." D'Achery, Spicilegium, t. iii. p. 114. (folio edition.) All the miseries that followed the battle of Poitiers he ascribes to bad government and neglect of the commonweal; but especially to the pride and luxury of the nobles. I am aware that this writer is biassed in favour of the king of Navarre; but he was an eye-witness of the people's misery, and perhaps a less exceptionable authority than Froissart, whose love of pageantry and habits of feasting in the castles of the great, seem to have produced some insensibility towards the sufferings of the lower classes. It is a painful circumstance, which Froissart and the continuator of Nangis attest, that the citizens of Calais, more interesting that the common heroes of history, were unrewarded, and begged their bread in misery throughout France. Villaret contradicts this, on the authority of an ordinance which he has seen in their favour. But that was not a time when ordinances were very sure of execution. Vill. t. ix. p. 470. I must add, that the celebrated story of the six citizens of Calais, which has of late been called in question, receives strong confirmation from John Villani, who died very soon afterwards. L. xii. c. 96. Froissart of course wrought up the circumstances after his manner. In all the colouring of his history, he is as great a master as Livy, and as little observant of particular truth. M. de Bréquigny, almost the latest of those excellent antiquaries whose memoirs so much illustrate the French Academy of Inscriptions, has discussed the history of Calais, and particularly this remarkable portion of it. Mém. de l'Académie des Inscriptions, t. l.

Petrarch has drawn a lamentable picture of the state of France in 1360, when he paid a visit to Paris. I could not believe, he says, that this was the same kingdom which I had once seen so rich and flourishing. Nothing presented itself to my eyes but a fearful solitude, an extreme poverty, lands uncultivated, houses in ruins. Even the neighbourhood of Paris manifested every where marks of destruction and conflagration. The streets are deserted; the roads overgrown with weeds: the whole is a vast solitude. Mém. de Pétrarque, t. iii. p. 541.

ceded countries; by Edward, of his claim to the throne of France. At Calais, the treaty of Bretigni was renewed by John, who, as a prisoner, had been no party to the former compact, with the omission only of the twelfth article, respecting the exchange of renunciations. But that it was not intended to wave them by this omission, is abundantly manifest by instruments of both the kings, in which reference is made to their future interchanges at Bruges, on the feast of St. Andrew, 1361. And, until that time should arrive, Edward promises to lay aside the title and arms of France, (an engagement which he strictly kept (1),) and John to act in no respect as king or suzerain over the ceded provinces. Finally, on November 15, 1361, two commissioners are appointed by Edward to receive the renunciations of the king of France at Bruges on the ensuing feast of St. Andrew (2), and to do whatever might be mutually required by virtue of the treaty. These, however, seem to have been withheld, and the twelfth article of the treaty of Bretigni was never expressly completed. By mutual instruments, executed at Calais, October 24, it had been declared, that the sovereignty of the ceded provinces, as well as Edward's right to the crown of France, should remain as before, although suspended as to its exercise, until the exchange of renunciations, notwithstanding any words of present conveyance or release in the treaties of Bretigni and Calais. And another pair of letters patent, dated October 26, contains the form of renunciations, which, it is mutually declared, should have effect by virtue of the present letters, in case one party should be ready to exchange such renunciations at the time and place appointed, and the other should make default therein. These instruments executed at Calais are so prolix, and so studiously enveloped, as it seems, in the obscurity of technical language, that it is difficult to extract their precise intention. It appears, nevertheless, that whichever party was prepared to perform what was required of him at Bruges on November 30, 1361, the other then and there making default, would acquire not only what our lawyers might call an equitable title, but an actual vested right, by virtue of the provision in the letters patent of October 26, 1360. The appointment above mentioned of Edward's commissioners on November 15, 1361, seems to throw upon the French the burden of proving, that John sent his envoys with equally full powers to the place of meeting, and that the non-interchange of renunciations was owing to the English government. But though an historian, sixty years later, (Juvenal des Ursins,) asserts that the French commissioners attended at Bruges, and that those of Edward made default, this is certainly rendered improbable by the actual appointment of commissioners made by the king of England on the 15th of November, by the silence of Charles V. after the re-

(1) Edward gives John the title of King of France, and in an instrument bearing date at Calais, October 22, 1360. Rymer, t. vi. p. 217. The treaty was signed October 24. Id. p. 219.

(2) Rym. t. vi. p. 339.

commencement of hostilities, who would have rejoiced in so good a ground of excuse, and by the language of some English instruments, complaining that the French renunciations were withheld (1). It is suggested by the French authors, that Edward was unwilling to execute a formal renunciation of his claim to the crown. But we can hardly suppose, that, in order to evade this condition, which he had voluntarily imposed upon himself by the treaties of Bretigni and Calais, he would have left his title to the provinces ceded by those conventions imperfect. He certainly deemed it indefeasible, and acted without any complaint from the French court, as the perfect master of those countries. He created his son Prince of Aquitaine, with the fullest powers over that new principality, holding it in fief of the crown of England by the yearly rent of an ounce of gold (2). And the court of that great prince was kept for several years at Bordeaux.

I have gone something more than usual into detail as to these circumstances, because a very specious account is given by some French historians and antiquaries, which tends to throw the blame of the rupture in 1368 upon Edward III. (3). Unfounded as was his pretension to the crown of France, and actuated as we must consider

(1) It appears that among other alleged infractions of the treaty, the king of France had received appeals from Armagnac, Albret, and other nobles of Aquitaine, not long after the peace. For in February, 1362, a French envoy, the count de Tancarville, being in England, the privy council presented to Edward their bill of remonstrances against this conduct of France; et semble au conseil le roy d'Angleterre que consideré la fourme de la ditte paix, qui tant estoit honourable et profitable au royaume de France et à toute chretienté, que la reception desdittes appellacions n'a mie esté bien faite, ne passée si ordenément, ne à si bon affection et amour comme il doit avoir esté faite de raison parmi l'effet et l'intention de la paix, et ailliances affermées et entr'eux semble estre moult prejudiciables et contraires à l'onneur et à l'estat du roy et de son fils le prince et de toute la maison d'Angleterre, et pourra estre evidente matiere de rebellion des subgiez, et aussi donner tres-grant occasion d'enfraindre la paix, si bon remede sur ce n'y soit mis plus hastivement. Upon the whole, they conclude that if the king of France would repair this trespass, and send his renunciation of sovereignty, the king should send his of the title of France. Martenne, Thes. Anec. t. i. p. 1487.

Four princes of the blood, or, as they are termed, Seigneurs des Fleurdelys, were detained as hostages for the due execution of the treaty of Bretigni, which, from whatever pretence, was delayed for a considerable time. Anxious to obtain their liberty, they signed a treaty at London in November, 1362, by which, among other provisions, it was stipulated, that the king of France should send fresh letters, under his seal, conveying and releasing the territories ceded by the peace, without the clause contained in the former letters, retaining the ressort.: et que en ycelles lettres soit expressement compris transport de la souveraineté et du ressort, etc. Et le roi d'Engleterre et ses enfans ferront semblablement autiela renonciations, sur ce qu'il doit faire de sa partie. Rymer, t. vi. p. 306. This treaty of London was never ratified by the French government; but I use it as a proof, that Edward imputed the want of mutual renunciations to France, and was himself ready to perform his part of the treaty.

(2) Rym. t. vi. p. 385-389. One clause is remarkable; Edward reserves to himself the right of creating the province of Aquitaine into a kingdom. So high were the notions of this great monarch, in an age when the privilege of creating new kingdoms was deemed to belong only to the pope and the emperor. Etiam si per nos hujusmodi provinciæ ad regalis honoris titulum et fastigium imposterum sublimentur; quam erectionem faciendam per nos ex tunc specialiter reservamus.

(3) Besides Villaret, and other historians, the reader, who feels any curiosity on this subject, may consult three memoirs in the 15th volume of the Academy of Inscriptions, by MM. Sécousse, Salier, and Bonamy.—These distinguished antiquaries unite, but the third with much less confidence and passion than the other two, in charging the omission upon Edward. The observations in the text will serve, I hope, to repel their arguments, which, I may be permitted to observe, no English writer has hitherto undertaken to answer. This is not said in order to assume any praise to myself; in fact, I have been guided, in a great degree, by one of the adverse counsel, M. Bonamy, whose statement of facts is very fair, and makes me suspect a little, that he saw the weakness of his own cause.

The authority of Christine de Pisan, a contemporary panegyrist of the French king, is not perhaps very material in such a question: but she seems wholly ignorant of this supposed omission on Edward's side, and puts the justice of Charles V.'s war on a very different basis; namely, that treaties not conducive to the public interest ought not to be kept.—Collection des Mémoires, t. v. p. 127. A principle more often acted upon than avowed!

him by the most ruinous ambition, his character was unblemished by ill-faith. There is no apparent cause to impute the ravages made in France by soldiers formerly in the English service to his instigation, nor any proof of a connexion with the king of Navarre, subsequently to the peace of Bretigni. But a good lesson may be drawn by conquerors from the change of fortune that befel Edward III. A long warfare, and unexampled success, had procured for him some of the richest provinces of France. Within a short time he was entirely stripped of them, less through any particular misconduct, than in consequence of the intrinsic difficulty of preserving such acquisitions. The French were already knit together as one people; and even those, whose feudal duties sometimes led them into the field against their sovereign, could not endure the feeling of dismemberment from the monarchy. When the peace of Bretigni was to be carried into effect, the nobility of the South remonstrated against the loss of the king's sovereignty, and shewed, it is said, in their charters granted by Charlemagne, a promise never to transfer the right of protecting them to another. The citizens of Rochelle implored the king not to desert them, and protested their readiness to pay half their estates in taxes, rather than fall under the power of England. John with heaviness of heart persuaded these faithful people to comply with that destiny which he had not been able to surmount. At length they sullenly submitted: we will obey, they said, the English with our lips, but our hearts shall never forget their allegiance (1). Such unwilling subjects might perhaps have been won by a prudent government; but the temper of the Prince of Wales, which was rather stern and arbitrary, did not conciliate their hearts to his cause (2). After the expedition into Castile, a most injudicious and fatal enterprize, he attempted to impose a heavy tax upon Guienne. This was extended to the lands of the nobility, who claimed an immunity from all impositions. Many of the chief lords in Guienne and Gascony carried their complaints to the throne of Charles V., who had succeeded his father in 1364, appealing to him as the prince's sovereign and judge. After a year's delay, the king ventured to summon the Black Prince to answer these charges before the peers of France, and the war immediately recommenced between the two countries (3).

Charles V. Rupture of the peace of Bretigni.

1368

Though it is impossible to reconcile the conduct of Charles upon this occasion to those stern principles of rectitude which ought always to be obeyed, yet the exceeding injustice of Edward in the

(1) Froissart, part i. chap. 214.

(2) See an anecdote of his difference with the seigneur d'Albret, one of the principal barons in Gascony, to which Froissart, who was then at Bordeaux, ascribes the alienation of the southern nobility, chap. 244.—Edward III., soon after the peace of Bretigni, revoked all his grants in Guienne.—Rymer, t. vi. p. 391.

(3) On November 20, 1368, some time before the summons of the Prince of Wales, a treaty was concluded between Charles, and Henry king of Castile, wherein the latter expressly stipulates, that whatever parts of Guienne or England he might conquer, he would give up to the king of France. —Rymer, t. vi. p. 598.

former war, and the miseries which he inflicted upon an unoffending people in the prosecution of his claim, will go far towards extenuating this breach of the treaty of Bretigni. It is observed, indeed, with some truth, by Rapin, that we judge of Charles's prudence by the event; and that if he had been unfortunate in the war, he would have brought on himself the reproaches of all mankind, and even of those writers who are now most ready to extol him. But his measures had been so sagaciously taken, that except through that perverseness of fortune, against which, especially in war, there is no security, he could hardly fail of success. The elder Edward was declining through age, and the younger through disease; the ceded provinces were eager to return to their native king, and their garrisons, as we may infer by their easy reduction, feeble and ill-supplied. France, on the other hand, had recovered breath after her losses: the sons of those who had fallen or fled at Poitiers were in the field; a king, not personally warlike, but eminently wise and popular, occupied the throne of the rash and intemperate John. She was restored by the policy of Charles V. and the valour of du Guesclin. This hero, a Breton gentleman without fortune, or exterior graces, was the greatest ornament of France during that age. Though inferior, as it seems, to Lord Chandos in military skill, as well as in the polished virtues of chivalry, his unwearied activity, his talent of inspiring confidence, his good fortune, the generosity and frankness of his character, have preserved a fresh recollection of his name, which has hardly been the case with our countryman.

The English lose all their conquests.

In a few campaigns the English were deprived of almost all their conquests, and even, in a great degree, of their original possessions in Guienne. They were still formidable enemies, not only from their courage and alacrity in the war, but on account of the keys of France which they held in their hands; Bordeaux, Bayonne and Calais, by inheritance or conquest; Brest and Cherbourg, in mortgage from their allies, the duke of Britany and king of Navarre. But the successor of Edward III. was Richard II.; a reign of feebleness and sedition gave no opportunity for prosecuting schemes of ambition. The war, protracted with few distinguished events for several years, was at length suspended by repeated armistices, not indeed very strictly observed, and which the animosity of the English would not permit to settle in any regular treaty. Nothing less than the terms obtained at Bretigni, emphatically called the Great Peace, would satisfy a frank and courageous people, who deemed themselves cheated by the manner of its infraction. The war was therefore always popular in England, and the credit which an ambitious prince, Thomas, duke of Gloucester, obtained in that country, was chiefly owing to the determined opposition which he shewed to all French connexions. But the politics of Richard II. were of a different cast;

and Henry IV. was equally anxious to avoid hostilities with France; so that before the unhappy condition of that kingdom tempted his son to revive the claims of Edward in still more favourable circumstances, there had been thirty years of respite, and even some intervals of friendly intercourse between the two nations. Both, indeed, were weakened by internal discord; but France more fatally than England. But for the calamities of Charles VI.'s reign, she would probably have expelled her enemies from the kingdom. The strength of that fertile and populous country was recruited with surprising rapidity. Sir Hugh Calverley, a famous captain in the wars of Edward III., while serving in Flanders, laughed at the herald, who assured him that the king of France's army, then entering the country, amounted to 26,000 lances; asserting that he had often seen their largest musters, but never so much as a fourth part of the number (1). The relapse of this great kingdom under Charles VI. was more painful and perilous than her first crisis; but she recovered from each through her intrinsic and inextinguishable resources.

Accession of Charles VI. 1380

Charles V., sirnamed the Wise, after a reign which, if we overlook a little obliquity in the rupture of the peace of Bretigni, may be deemed one of the most honourable in French history, dying prematurely, left the crown to his son, a boy of thirteen, under the care of three ambitious uncles, the dukes of Anjou, Berry, and Burgundy. Charles had retrieved the glory, restored the tranquillity, revived the spirit of his country; the severe trials which exercised his regency, after the battle of Poitiers, had disciplined his mind; he became a sagacious statesman, an encourager of literature, a beneficent lawgiver. He erred doubtless, though upon plausible grounds, in accumulating a vast treasure, which the duke of Anjou seized before he was cold in the grave. But all the fruits of his wisdom were lost in the succeeding reign. In a government essentially popular, the youth or imbecility of the sovereign creates no material derangement. In a monarchy, where all the springs of the system depend upon one central force, these accidents, which are sure in the course of a few generations to recur, can scarcely fail to dislocate the whole machine. During the forty years that Charles VI. bore the name of king, rather than reigned in France, that country was reduced to a state far more deplorable than during the captivity of John.

A great change had occurred in the political condition of France during the fourteenth century. As the feudal militia became unserviceable, the expenses of war were increased through the necessity of taking troops into constant pay; and while more luxurious refinements of living heightened the temptations to profuseness, the means of enjoying them were lessened by improvident alienations of the domain. Hence taxes, hitherto almost unknown, were

(1) Froissart, p. ii. c. 142.

levied incessantly, and with all those circumstances of oppression, which are natural to the fiscal proceedings of an arbitrary government. These, as has been said before, gave rise to the unpopularity of the two first Valois, and were nearly leading to a complete revolution in the convulsions that succeeded the battle of Poitiers. The confidence reposed in Charles V.'s wisdom and economy kept every thing at rest during his reign, though the taxes were still very heavy. But the seizure of his vast accumulations by the duke of Anjou, and the ill faith with which the new government imposed subsidies, after promising their abolition, provoked the people of Paris, and sometimes of other places, to repeated seditions. The States General not only compelled the government to revoke these impositions and restore the nation, at least according to the language of edicts, to all their liberties, but, with less wisdom, refused to make any grant of money. Indeed, a remarkable spirit of democratical freedom was then rising in those classes, on whom the crown and nobility had so long trampled. An example was held out by the Flemings, who, always tenacious of their privileges, because conscious of their ability to maintain them, were engaged in a furious conflict with Louis, count of Flanders (1). The court of France took part in this war; and after obtaining a decisive victory over the citizens of Ghent, Charles VI. returned to chastise those of Paris (2). Unable to resist the royal army, the city was treated as the spoil of conquest; its immunities abridged; its most active leaders put to death; a fine of uncommon severity imposed; and the taxes renewed by arbitrary prerogative. But the people preserved their indignation for a favourable moment; and were unfortunately led by it, when rendered subservient to the ambition of others, into a series of crimes, and a long alienation from the interests of their country.

Seditions at Paris.

It is difficult to name a limit beyond which taxes will not be borne without impatience, when they appear to be called for by necessity, and faithfully applied; nor is it impracticable for a skil-

(1) The Flemish rebellion, which originated in an attempt, suggested by bad advisers to the count, to impose a tax upon the people of Ghent without their consent, is related in a very interesting manner by Froissart, p. ii. c. 37, etc. who equals Herodotus in simplicity, liveliness, and power over the heart. I would advise the historical student to acquaint himself with these transactions, and with the corresponding tumults at Paris.—They are among the eternal lessons of history; for the unjust encroachments of courts, the intemperate passions of the multitude, the ambition of demagogues, the cruelty of victorious factions, will never cease to have their parallels and their analogies; while the military achievements of distant times afford, in general, no instruction, and can hardly occupy too little of our time in historical studies. The prefaces to the fifth and sixth volumes of the Ordonnances des Rois de France, contain more accurate information as to the Parisian disturbances, than can be found in Froissart.

(2) If Charles VI. had been defeated by the Flemings, the insurrection of the Parisians, Froissart says, would have spread over France; toute gentillesse et noblesse eût été morte et perdue en France; nor would the Jacquerie have ever been si grande et si horrible. c. 120. To the example of the Gantois he ascribes the tumults which broke out about the same time in England as well as in France. c. 84. The Flemish insurrection would probably have had more important consequences, if it had been cordially supported by the English government. But the danger of encouraging that democratical spirit which so strongly leavened the commons of England, might justly be deemed by Richard II.'s council much more than a counterbalance to the advantage of distressing France. When too late, some attempts were made, and the Flemish towns acknowledged Richard as king of France in 1384. Rymer, t. vii. p. 448.

ful minister to deceive the people in both these respects. But the sting of taxation is wastefulness. What high-spirited man could see without indignation the earnings of his labour, yielded ungrudgingly to the public defence, become the spoil of parasites and peculators? It is this that mortifies the liberal hand of public spirit; and those statesmen who deem the security of government to depend not on laws and armies, but on the moral sympathies and prejudices of the people, will vigilantly guard against even the suspicion of prodigality. In the present stage of society, it is impossible to conceive that degree of misapplication which existed in the French treasury under Charles VI., because the real exigencies of the state could never again be so inconsiderable. Scarcely any military force was kept up; and the produce of the grievous impositions then levied was chiefly lavished upon the royal household, or plundered by the officers of government (1). This naturally resulted from the peculiar and afflicting circumstances of this reign. The duke of Anjou pretended to be entitled by the late king's appointment, if not by the constitution of France, to exercise the government as regent during the minority (2); but this period, which would naturally be very short, a law of Charles V. having fixed the age of majority at thirteen, was still more abridged by consent; and after the young monarch's coronation, he was considered as reigning with full personal authority. Anjou, Berry, and Burgundy, together with the king's maternal uncle, the duke of Bourbon, divided the actual exercise of government.

The first of these soon undertook an expedition into Italy, to possess himself of the crown of Naples, in which he perished. Berry was a profuse and voluptuous man, of no great talents; though his rank, and the middle position which he held between struggling parties, made him rather conspicuous throughout the revolutions of that age. The most respectable of the king's uncles, the duke

(1) The expenses of the royal household, which under Charles V. were 94,000 livres, amounted in 1412 to 450,000. Villaret, t. iii. p. 248. Yet the king was so ill supplied, that his plate had been pawned. When Montagu, minister of the finances, was arrested, in 1409, all this plate was found concealed in his house.

(2) It has always been an unsettled point, whether the presumptive heir is entitled to the regency of France; and if he be so to the regency, whether this includes the custody of the minor's person. The particular case of the duke of Anjou is subject to a considerable apparent difficulty. Two instruments of Charles V., bearing the same date of October, 1374, as published by Dupuy, (Traité de Majorité des Rois, p. 161.) are plainly irreconcileable with each other; the former giving the exclusive regency to the duke of Anjou, reserving the custody of the minor's person to other guardians; the latter conferring not only this custody, but the government of the kingdom, on the queen, and on the dukes of Burgundy and Bourbon, without mentioning the duke of Anjou's name. Daniel calls these testaments of Charles V., whereas they are in the form of letters patent; and supposes that the king had suppressed both, as neither party seems to have availed itself of their authority in the discussions that took place after the king's death. (Hist. de France, t. iii. p. 662. edit. 1720.) Villaret, as is too much his custom, slides over the difficulty without notice. But M. de Bréquigny, (Mém. de l'Acad. des Inscript. t. i. p. 533.) observes that the second of these instruments, as published by M. Sécousse, in the Ordonnances des Rois, t. vi. p. 406. differs most essentially from that in Dupuy, and contains no mention whatever of the government. It is therefore easily reconcileable with the first, that confers the regency on the duke of Anjou. As Dupuy took it from the same source as Sécousse, namely, the Tressor des Chartes, a strong suspicion of wilful interpolation falls upon him, or upon the editor of this posthumous work, printed in 1655. This date will readily suggest a motive for such an interpolation, to those who recollect the circumstances of France at that time, and for some years before; Anne of Austria having maintained herself in possession of a testamentary regency against the presumptive heir.

of Bourbon, being further removed from the royal stem, and of an unassuming character, took a less active part than his three coadjutors. Burgundy, an ambitious and able prince, maintained the ascendancy, until Charles, weary of a restraint, which had been protracted by his uncles till he was in his twenty-first year, took the reins into his own hands. The dukes of Burgundy and Berry retired from court, and the administration was committed to a different set of men, at the head of whom appeared the constable de Clisson, a soldier of great fame in the English wars. The people rejoiced in the fall of the princes, by whose exactions they had been plundered; but the new ministers soon rendered themselves odious by similar conduct. The fortune of Clisson, after a few years' favour, amounted to 1,700,000 livres, equal in weight of silver, to say nothing of the depreciation of money, to ten times that sum at present (1).

1387

Derangement of Charles VI. 1393

Charles VI. had reigned five years from his minority, when he was seized with a derangement of intellect, which continued, through a series of recoveries and relapses, to his death. He passed thirty years in a pitiable state of suffering, neglected by his family, particularly by the most infamous of women, Isabel of Bavaria, his queen, to a degree which is hardly credible. The ministers were immediately disgraced; the princes reassumed their stations. For several years the duke of Burgundy conducted the government. But this was in opposition to a formidable rival, Louis, duke of Orleans, the king's brother. It was impossible that a prince so near to the throne, favoured by the queen perhaps with criminal fondness, and by the people on account of his external graces, should not acquire a share of power. He succeeded at length in obtaining the whole management of affairs; wherein the outrageous dissoluteness of his conduct, and still more the excessive taxes imposed, rendered him altogether odious. The Parisians compared his administration with that of the duke of Burgundy; and from that time ranged themselves on the side of the latter and his family, throughout the long distractions to which the ambition of these princes gave birth.

Parties of Burgundy and Orleans.

The death of the duke of Burgundy, in 1404, after several fluctuations of success between him and the duke of Orleans, by no means left his party without a head. Equally brave and ambitious, but far more audacious and unprincipled, his son John, sirnamed Sans-peur, sustained the same contest. A reconciliation had been, however, brought about with the duke of Orleans; they had sworn reciprocal friendship, and participated, as was the custom, in order to render these obligations more solemn, in the same communion. In the midst of this outward harmony, the duke of Orleans was assassinated in the streets of Paris. After a slight attempt at concealment, Burgundy avowed and

Murder of the duke of Orleans. 1407

(1) Froissart, p. iv. c. 46.

boasted of the crime, to which he had been instigated, it is said, by somewhat more than political jealousy (1). From this fatal moment, the dissensions of the royal family began to assume the complexion of civil war. The queen, the sons of the duke of Orleans, with the dukes of Berry and Bourbon, united against the assassin. But he possessed, in addition to his own apanage of Burgundy, the county of Flanders as his maternal inheritance; and the people of Paris, who hated the duke of Orleans, readily forgave or rather exulted in his murder.

It is easy to estimate the weakness of the government, from the terms upon which the duke of Burgundy was permitted to obtain pardon at Chartres, a year after the perpetration of the crime. As soon as he entered the royal presence, every one rose, except the king, queen, and dauphin. The duke, approaching the throne, fell on his knees; when a lord, who acted as a sort of counsel for him, addressed the king: "Sire, the duke of Burgundy your cousin and "servant is come before you, being informed that he has incurred "your displeasure, on account of what he caused to be done to the "duke of Orleans your brother, for your good and that of your "kingdom, as he is ready to prove when it shall please you to hear "it; and therefore requests you, with all humility, to dismiss your "resentment towards him, and to receive him into your favour (2)."

This insolent apology was all the atonement that could be extorted for the assassination of the first prince of the blood. It is not wonderful that the duke of Burgundy soon obtained the management of affairs, and drove his adversaries from the capital. The princes, headed by the father-in-law of the young duke of Orleans, the count of Armagnac, from whom their party was now denominated, raised their standard against him; and the north of France was rent to pieces by a protracted civil war, in which neither party scrupled any extremity of pillage or massacre. Several times peace was made; but each faction, conscious of their own insincerity, suspected that of their adversaries. The king, of whose name both availed themselves, was only in some doubtful intervals of reason capable of rendering legitimate the acts of either. The dauphin, aware of the tyranny which the two parties alternately exercised, was forced, even at the expense of perpetuating a civil war, to balance one against the other, and permit neither to be wholly subdued. He gave peace to the Armagnacs at Auxerre, in despite of the duke of Burgundy; and having afterwards united with them against this prince, and carried a successful war into Flanders, he disappointed their revenge by concluding with him a treaty at Arras.

1410 Civil war between the parties.

1412
1414

(1) Orleans is said to have boasted of the duchess of Burgundy's favours. Villi. t. xii. p. 474. Amelgard, who wrote about eight years after the time, says, vim etiam inferre attentare præsumpsit. Notices des Manuscrits du Roi, t. i. p. 411.

(2) Monstrelet, part. i. f. 112.

This dauphin, and his next brother, died within sixteen months of each other, by which the rank devolved upon Charles, youngest son of the king. The count of Armagnac, now constable of France, retained possession of the government. But his severity and the weight of taxes revived the Burgundian party in Paris, which a rigid proscription had endeavoured to destroy. He brought on his head the implacable hatred of the queen, whom he had not only shut out from public affairs, but disgraced by the detection of her gallantries. Notwithstanding her ancient enmity to the duke of Burgundy, she made overtures to him, and being delivered by his troops from confinement, declared herself openly on his side. A few obscure persons stole the city keys, and admitted the Burgundians into Paris. The tumult which arose shewed in a moment the disposition of the inhabitants; but this was more horribly displayed a few days afterwards, when the populace, rushing to the prisons, massacred the constable d'Armagnac and his partizans. Between three and four thousand persons were murdered on this day, which has no parallel but what our own age has witnessed, in the massacre perpetrated by the same ferocious populace of Paris, under circumstances nearly similar. Not long afterwards an agreement took place between the duke of Burgundy, who had now the king's person, as well as the capital, in his hands, and the dauphin, whose party was enfeebled by the loss of almost all its leaders. This reconciliation, which mutual interest should have rendered permanent, had lasted a very short time, when the duke of Burgundy was assassinated at an interview with Charles, in his presence, and by the hands of his friends, though not perhaps with his previous knowledge (1). From whomsoever the crime proceeded, it was a deed of infatuation, and plunged France afresh into a sea of perils, from which the union of these factions had just afforded a hope of extricating her.

April, 1417.

1417

June 12, 1418.

1419

Assassination of the duke of Burgundy.

(1) There are three suppositions conceivable to explain this important passage in history, the assassination of John Sans-peur. 1. It was pretended by the dauphin's friends at the time, and has been maintained more lately, (St. Foix, Essais sur Paris, t. iii. p. 209. edit. 1767.) that he had premeditated the murder of Charles, and that his own was an act of self-defence. This is, I think, quite improbable: the dauphin had a great army near the spot, while the duke was only attended by five hundred men. Villaret indeed, and St. Foix, in order to throw suspicion upon the duke of Burgundy's motives, assert that Henry V. accused him of having made proposals to him which he could not accept without offending God; and conjecture that this might mean the assassination of the dauphin. But the expressions of Henry do not relate to any private proposals of the duke, but to demands made by him and the queen, as proxies for Charles VI., in conference for peace, which he says he could not accept without offending God and contravening his own letters patent. (Rymer, t. ix. p. 790.) It is not, however, very clear what this means. 2. The next hypothesis is, that it was the deliberate act of Charles. But his youth, his feebleness of spirit, and especially the consternation into which, by all testimonies, he was thrown by the event, are rather adverse to this explanation. 3. It remains only to conclude that Tanegui de Chastel, and other favourites of the dauphin, long attached to the Orleans faction, who justly regarded the duke as an infamous assassin, and might question his sincerity, or their own safety, if he should regain the ascendant, took advantage of this opportunity to commit an act of retaliation, less criminal, but not less ruinous in its consequences, than that which had provoked it. Charles, however, by his subsequent conduct, recognised their deed, and naturally exposed himself to the resentment of the young duke of Burgundy.

It has been mentioned already, that the English war had almost ceased during the reigns of Richard II. and Henry IV. The former of these was attached by inclination, and latterly by marriage, to the court of France: and though the French government shewed at first some disposition to revenge his dethronement, yet the new king's success, as well as domestic quarrels, deterred it from any serious renewal of the war. A long commercial connexion had subsisted between England and Flanders, which the dukes of Burgundy, when they became sovereigns of the latter country upon the death of Count Louis in 1384, were studious to preserve by separate truces (1). They acted upon the same pacific policy, when their interest predominated in the councils of France. Henry had even a negociation pending for the marriage of his eldest son with a princess of Burgundy (2), when an unexpected proposal from the opposite side set more tempting views before his eyes. The Armagnacs, pressed hard by the duke of Burgundy, offered, in consideration of only 4,000 troops, the pay of which they would themselves defray, to assist him in the recovery of Guienne and Poitou. Four princes of the blood, Berry, Bourbon, Orleans, and Alençon, disgraced their names by signing this treaty (3). Henry broke off his alliance with Burgundy, and sent a force into France, which found, on its arrival, that the princes had made a separate treaty, without the least concern for their English allies. After his death, Henry V. engaged for some time in a series of negotiations with the French court, where the Orleans party now prevailed, and with the duke of Burgundy. He even secretly treated at the same time for a marriage with Catharine of France, (which seems to have been his favourite, as it was ultimately his successful, project,) and with a daughter of the duke; a duplicity not creditable to his memory (4). But Henry's ambition, which aimed at the highest quarry, was not long fettered by negotiation; and indeed his proposals of marrying Catharine were coupled with such exorbitant demands, as France, notwithstanding all her weakness, could not admit; though she would have ceded Guienne, and given a vast dowery with the princess (5). He invaded Normandy, took Harfleur, and won the great battle of Azincourt on his march to Calais (6)

Intrigues of French princes with England.

May, 1412.

Invasion of France by Henry V, 1415.

The flower of French chivalry was mowed down in this fatal day, but especially the chiefs of the Orleans party, and the princes of the

(1) Rymer, t. viii. p. 511. Villaret, t. xii. p. 174.
(2) Idem, t. viii. p. 721.
(3) Idem, t. viii. pp. 726. 737. 738.
(4) Idem, t. ix. p. 136.
(5) The terms required by Henry's ambassadors in 1415, were the crown of France; or, at least, reserving Henry's rights to that, Normandy, Touraine, Maine, Guienne, with the homage of Britany and Flanders. The French offered Guienne and Saintonge, and a dowery of 800,000 gold crowns for Catharine. The English demanded 2,000,000, Rym. t. ix. p. 218.
(6) The English army at Azincourt was probably of not more than 15,000 men; the French were, at least, 50,000, and, by some computations, much more numerous. They lost 10,000 killed, of whom 9,000 were knights or gentlemen. Almost as many were made prisoners. The English, according to Monstrelet, lost 1,600 men; but their own historians reduce this to a very small number. It is curious that the duke of Berry, who advised the French to avoid an action, had been in the battle of Poitiers fifty-nine years before. Vill. t. xiii. p. 355.

royal blood, met with death or captivity. Burgundy had still suffered nothing; but a clandestine negotiation had secured the duke's neutrality, though he seems not to have entered into a regular alliance till a year after the battle of Azincourt; when by a secret treaty at Calais, he acknowledged the right of Henry to the crown of France, and his own obligation to do him homage, though its performance was to be suspended till Henry should become master of a considerable part of the kingdom (1). In a second invasion, the English achieved the conquest of Normandy; and this, in all subsequent negotiations for peace during the life of Henry, he would never consent to relinquish. After several conferences, which his demands rendered abortive, the French court at length consented to add Normandy to the cessions made in the peace at Bretigni (2); and the treaty, though labouring under some difficulties, seems to have been nearly completed, when the duke of Burgundy, for reasons unexplained, suddenly came to a reconciliation with the dauphin. This event, which must have been intended adversely to Henry, would probably have broken off all parley on the subject of peace, if it had not been speedily followed by one still more surprising, the assassination of the duke of Burgundy at Montereau.

July 11. 1419.

Sept. 10. 1419.

An act of treachery so apparently unprovoked inflamed the minds of that powerful party, which had looked up to the duke as their leader and patron. The city of Paris, especially, abjured at once its respect for the supposed author of the murder, though the legitimate heir of the crown. A solemn oath was taken by all ranks to revenge the crime; the nobility, the clergy, the parliament, vying with the populace in their invectives against Charles, whom they now styled only pretended (soi-disant) dauphin. Philip, son of the assassinated duke, who, with all the popularity and much of the ability of his father, did not inherit his depravity, was instigated by a pardonable excess of filial resentment to ally himself with the king of England. These passions of the people and the duke of Burgundy, concurring with the imbecility of Charles VI., and the rancour of Isabel towards her son, led to the treaty of Troyes. This compact, signed by the queen and duke, as proxies of the king, who had fallen into a state of unconscious idiocy, stipulated that Henry V., upon his marriage with Catharine, should become immediately regent of France, and, after the death of Charles, succeed to the kingdom, in exclusion not only of the dauphin, but of all the royal family (3). It is unnecessary to remark that these fla-

Treaty of Troyes. May, 1420.

(1) Compare Rym. t. ix. pp. 34. 128. 304. 394. The last reference is to the treaty of Calais.

(2) Rym. t. ix. p. 628. 763. Nothing can be more insolent than the tone of Henry's instructions to his commissioners, p. 628.

(3) As if through shame on account of what was to follow, the first articles contain petty stipulations about the dower of Catharine. The sixth gives the kingdom of France after Charles's decease to Henry and his heirs. The seventh concedes the immediate regency. Henry kept Normandy by right of conquest, not in virtue of any stipulation in the treaty, which he was too proud to admit. The treaty of Troyes was confirmed by the States general, or rather by a partial convention which assumed the name, in December 1420. Rym. t. x.

gitious provisions were absolutely invalid. But they had at the time the strong sanction of force; and Henry might plausibly flatter himself with a hope of establishing his own usurpation as firmly in France, as his father's had been in England. What neither the comprehensive policy of Edward III., the energy of the Black Prince, the valour of their Knollyses and Chandoses, nor his own victories could attain, now seemed, by a strange vicissitude of fortune, to court his ambition. During two years that Henry lived after the treaty of Troyes, he governed the north of France with unlimited authority in the name of Charles VI. The latter survived his son-in-law but a few weeks; and the infant Henry VI. was immediately proclaimed king of France and England, under the regency of his uncle the duke of Bedford.

State of France at the accession of Charles VII.

1422

Notwithstanding the disadvantage of a minority, the English cause was less weakened by the death of Henry than might have been expected. The duke of Bedford partook of the same character, and resembled his brother in faults as well as virtues; in his haughtiness and arbitrary temper, as in his energy and address. At the accession of Charles VII., the usurper was acknowledged by all the northern provinces of France, except a few fortresses, by most of Guienne, and the dominions of Burgundy. The duke of Britany soon afterwards acceded to the treaty of Troyes, but changed his party again several times within a few years. The central provinces, with Languedoc, Poitou, and Dauphiné, were faithful to the king. For some years the war continued without any decisive result; but the balance was clearly swayed in favour of England. For this it is not difficult to assign several causes. The animosity of the Parisians and the duke of Burgundy against the Armagnac party still continued, mingled in the former with dread of the king's return, whom they judged themselves to have inexpiably offended. The war had brought forward some accomplished commanders in the English army; surpassing, not indeed in valour and enterprise, but in military skill, any whom France could oppose to them. Of these the most distinguished, besides the duke of Bedford himself, were Warwick, Salisbury, and Talbot. Their troops, too, were still very superior to the French. But this, we must in candour allow, proceeded in a great degree from the mode in which they were raised. The war was so popular in England, that it was easy to pick the best and stoutest recruits (1), and their high pay allured men of respectable condition to the service. We find in Rymer a contract of the earl of Salisbury to supply a body of troops, receiving a shilling a day for every man at arms, and sixpence for each archer (2). This is perhaps

1423

Causes of the success of the English.

p. 30. The parliament of England did the same. Id. p. 110. It is printed at full length by Villaret, t. xv. p. 84.

(1) Monstrelet, part. i. f. 303.

(2) Rym. t. x. p. 392. This contract was for 600 men at arms, including six bannerets, and thirty-

equal to fifteen times the sum at our present value of money. They were bound indeed to furnish their own equipments and horses. But France was totally exhausted by her civil and foreign war, and incompetent to defray the expenses even of the small force which defended the wreck of the monarchy. Charles VII. lived in the utmost poverty at Bourges (1). The nobility had scarcely recovered from the fatal slaughter of Azincourt, and the infantry, composed of peasants or burgesses, which had made their army so numerous upon that day, whether from inability to compel their services, or experience of their inefficacy, were never called into the field. It became almost entirely a war of partisans. Every town in Picardy, Champagne, Maine, or wherever the contest might be carried on, was a fortress; and in the attack or defence of these garrisons, the valour of both nations was called into constant exercise. This mode of warfare was undoubtedly the best in the actual state of France, as it gradually improved her troops, and flushed them with petty successes. But what principally led to its adoption, was the license and insubordination of the royalists, who receiving no pay, owned no controul, and thought that, provided they acted against the English and Burgundians, they were free to choose their own points of attack. Nothing can more evidently shew the weakness of France, than the high terms by which Charles VII. was content to purchase the assistance of some Scottish auxiliaries. The earl of Buchan was made constable; the earl of Douglas had the duchy of Touraine, with a new title, Lieutenant-General of the kingdom. At a subsequent time, Charles offered the province of Saintonge to James I. for an aid of 6,000 men. These Scots fought bravely for France, though unsuccessfully, at Crevant and Verneuil; but it must be owned they set a sufficient value upon their service. Under all these disadvantages, it would be unjust to charge the French nation with any inferiority of courage, even in the most unfortunate periods of this war. Though frequently panic-struck in the field of battle, they stood sieges of their walled towns with matchless spirit and endurance. Perhaps some analogy may be found between the character of the French commonalty during the English invasion, and the Spaniards of the late peninsular war. But to the exertions of those brave nobles who restored the monarchy of Charles VII., Spain has afforded no adequate parallel.

Character of Charles VII.

It was, however, in the temper of Charles VII. that his enemies found their chief advantage. This prince is one of the few, whose character has been improved by prosperity. During the calamitous morning of his reign, he shrunk from fronting the storm, and strove to forget himself in pleasure. Though

four bachelors; and for 1700 archers; bien et suffisamment montez, armez et arraiez comme a leurs estats appartient. The pay was, for the earl, 6s. 8d. a day; for a banneret, 4s.; for a bachelor, 2s; for every other man at arms, 1s.; and for each archer, 6d. Artillery-men were paid higher than men at arms.

(1) Villaret, t. xiv. p. 302.

brave, he was never seen in war; though intelligent, he was governed by flatterers. Those who had committed the assassination at Montereau under his eyes were his first favourites; as if he had determined to avoid the only measure through which he could hope for better success, a reconciliation with the duke of Burgundy. The count de Richemont, brother of the duke of Britany, who became afterwards one of the chief pillars of his throne, consented to renounce the English alliance, and accept the rank of constable, on condition that these favourites should quit the court. Two others, who successively gained a similar influence over Charles, Richemont publicly caused to be assassinated, 1424 assuring the king that it was for his own and the public good. Such was the debasement of morals and government, which twenty years of civil war had produced! Another favourite, La Tremouille, took the dangerous office, and, as might be expected, employed his influence against Richemont, who for some years lived on his own domains, rather as an armed neutral than a friend, though he never lost his attachment to the royal cause.

It cannot therefore surprise us, that with all these advantages the regent duke of Bedford had almost completed the capture of the fortresses north of the Loire, when he invested Orleans in 1428. If this city had fallen, the central provinces, which were less furnished with defensible places, would have lain open to the enemy; and it is said that Charles VII. in despair was about to retire into Dauphiné. At this time his affairs were restored by one of the most marvellous revolutions in history. A country girl overthrew the power of England. We cannot pretend to explain the surprising story of the Maid of Orleans; for, however easy it may be to suppose that a heated and enthusiastic imagination produced her own visions, it is a much greater problem to account for the credit they obtained, and for the success that attended her. Nor will this be solved by the hypothesis of a concerted stratagem; which, if we do not judge altogether from events, must appear liable to so many chances of failure, that it could not have suggested itself to any rational person. However, it is certain that the appearance of Joan of Arc turned the tide of war, which from that moment flowed without interruption in Charles's favour. A superstitious awe enfeebled the sinews of the English. They hung back in their own country, or deserted from the army, through fear of the incantations, by which alone they conceived so extraordinary a person to succeed (1). As men always make sure of Providence for an ally, whatever untoward fortune appeared to result from preternatural causes was at once

Siege of Orleans.

Joan of Arc.

(1) Rym. t. x. p. 438—472. This, however, is conjecture; for the cause of their desertion is not mentioned in these proclamations, though Rymer has printed it in their title. But the duke of Bedford speaks of the turn of success as astonishing, and due only to the superstitious fear which the English had conceived of a female magician. Rymer, t. x. p. 408.

ascribed to infernal enemies; and such bigotry may be pleaded as an excuse, though a very miserable one, for the detestable murder of this heroine (1).

The king retrieves his affairs;

The spirit which Joan of Arc had roused did not subside. France recovered confidence in her own strength, which had been chilled by a long course of adverse fortune. The king too, shook off his indolence (2), and permitted Richemont to exclude his unworthy favourites from the court. This led to a very important consequence. The duke of Burgundy, whose alliance with England had been only the fruit of indignation at his father's murder, fell naturally, as that passion wore out, into sentiments more congenial to his birth and interests. A prince of the house of Capet could not willingly see the inheritance of his ancestors transferred to a stranger. And he had met with provocation both from the regent and the duke of Gloucester, who, in contempt of all policy and justice, had endeavoured, by an invalid marriage with Jacqueline, countess of Hainault and Holland, to obtain pro-

(1) M. de l'Averdy, to whom we owe the copious account of the proceedings against Joan of Arc, as well as those which Charles VII. instituted in order to rescind the former, contained in the third volume of Notices des Manuscrits du Roi, has justly made this remark, which is founded on the eagerness shewn by the university of Paris in the prosecution, and on his being conducted before an inquisitor; a circumstance exceedingly remarkable in the ecclesiastical history of France. But another material observation arises out of this. The Maid was pursued with peculiar bitterness by her countrymen of the English, or rather Burgundian, faction; a proof, that in 1430 their animosity against Charles VII. was still ardent.

(2) It is a current piece of history, that Agnes Sorel, mistress of Charles VII., had the merit of dissuading him from giving up the kingdom as lost, at the time when Orleans was besieged in 1428. Mezeray, Daniel, Villaret, and, I believe, every other modern historian, have mentioned this circumstance; and some of them, among whom is Hume, with the addition, that Agnes threatened to leave the court of Charles for that of Henry, affirming, that she was born to be the mistress of a great king. The latter part of this tale is evidently a fabrication, Henry VI. being at the time a child of seven years old. But I have, to say the least, great doubts of the main story, it is not mentioned by contemporary writers. On the contrary, what they say of Agnes leads me to think the date incompatible. Agnes died (in child-bed, as some say) in 1450, twenty-two years after the siege of Orleans. Monstrelet says, that she had been about five years in the service of the queen, and the king taking pleasure in her liveliness and wit, common fame had spread abroad, that she lived in concubinage with him. She certainly had a child, and was willing that it should be thought the king's; but he always denied it, et le pouvoit bien avoir emprunté ailleurs. pt. iii. f. 25. Olivier de la Marche, another contemporary, who lived in the court of Burgundy, says, about the year 1444, le Roy avoit nouvellement esleve une pauvre demoiselle, gentil-Femme, nommée Agnes Sorel, et mis en tel triumphe et tel pouvoir, que son estat estoit a comparer aux grandes princesses du Royaume, et certes c'estoit une des plus belles femmes que je vey oncques, et fit en sa qualité beaucoup au Royaume de France. Elle avancoit devers le Roy jusques gens d'armes, et gentils compaignons, et dont le Roy depuis fut bien servy. La Marche. Mem. Hist. t. viii. p. 145. Du Clercq, whose memoirs were first published in the same collection, says, that Agnes mourut par poison moult jeune. Ib. t. viii. p. 410. And the continuator of Monstrelet probably John Chartier, speaks of the youth and beauty of Agnes, which exceeded that of any other woman in France, and of the favour shewn her by the king, which so much excited the displeasure of the dauphin, on his mother's account, and he was suspected of having caused her to be poisoned. fol. 68. The same writer affirms of Charles VII. that he was, before the peace of Arras, de moult belle vie et devote; but afterwards calaidit sa vie de tenir males femmes en son hostel, etc. fol. 86.

It is for the reader to judge how far these passages render it improbable, that Agnes Sorel was the mistress of Charles VII. at the siege of Orleans in 1428, and, consequently, whether she is entitled to the praise which she has received, of being instrumental in the deliverance of France. The tradition, however, is as ancient as Francis I., who made in her honour a quatrain which is well known. This probably may have brought the story more into vogue, and led Mezeray, who was not very critical, to insert it in his history, from which it has passed to his followers. Its origin was apparently the popular character of Agnes. She was the Nell Gwyn of France, and justly beloved, not only for her charity and courtesy, but for bringing forward men of merit, and turning her influence, a virtue very rare in her class, towards the public interest. From thence it was natural to bestow upon her, in after-times, a merit not ill suited to her character, but which an accurate observation of dates seems to render impossible. But whatever honour I am compelled to detract from Agnes Sorel, I am willing to transfer undiminished to a more unblemished female, the injured queen of Charles VII., Mary of Anjou, who has hitherto only shared with the usurper of her rights the credit of awakening Charles from his lethargy. Though I do not know on what foundation even this rests, it is not unlikely to be true, and, in deference to the sex, let it pass undisputed.

vinces which Burgundy designed for himself. Yet the union of his sister with Bedford, the obligations by which he was bound, and, most of all, the favour shewn by Charles VII. to the assassins of his father, kept him for many years on the English side although rendering it less and less assistance. But, at length he concluded a treaty at Arras, the terms of which he dictated rather as a conqueror, than a subject negotiating with his sovereign. Charles, however, refused nothing for such an end; and, in a very short time, the Burgundians were ranged with the French against their old allies of England.

and is reconciled to the duke of Burgundy.

It was now time for the latter to abandon those magnificent projects of conquering France, which temporary circumstances alone had seemed to render feasible. But as it is a natural effect of good fortune in the game of war, to render a people insensible to its gradual change, the English could not persuade themselves that their affairs were irretrievably declining. Hence they rejected the offer of Normandy and Guienne, subject to the feudal superiority of France, which was made to them at the congress of Arras (1); and some years afterwards, when Paris, with the adjacent provinces, had been lost, the English ambassadors, though empowered by their private instructions to relax, stood upon demands quite disproportionate to the actual position of affairs (2). As foreign enemies, they were odious even in that part of France which had acknowledged Henry (3); and when the duke of Burgundy deserted their side, Paris and every other city were impatient to throw off the yoke. A feeble monarchy, and a selfish council, completed their ruin: the necessary subsidies were raised with difficulty, and, when raised, misapplied. It is a proof of the exhaustion of France, that Charles was unable, for several years, to reduce Normandy or Guienne, which were so ill-provided for defence (4). At last he came with collected strength to the contest, and breaking an armistice upon slight pretences, within two years overwhelmed the English garrisons in each of these provinces. All the inheritance of Henry II., and Eleanor, all the conquests of Edward III. and Henri V., except Calais and a small adjacent district, were irrecoverably torn from the crown of England. A barren title, that idle trophy of disappointed ambition, was preserved, with strange obstinacy, to our own age.

Impolicy of the English.

They lose all their conquests. 1449

(1) Villaret says: Les plénipotentiaires de Charles offrirent la cession de la Normandie et de la Guienne *en toute propriété, sous la clause de l'hommage à la couronne*, t. xv. p. 174. But he does not quote his authority, and I do not like to rely on an historian, not eminent for accuracy in fact, or precision in language. If his expression is correct, the French must have given up the feudal appeal, or *ressort*, which had been the great point in dispute between Edward III. and Charles V., preserving only a homage *per paragium*, as it was called, which implied no actual supremacy. Monstrelet says only, que per certaines conditions luy seroient accordées les seigneuries de Guienne et de Normandie.

(2) See the instructions given to the English negotiators in 1439, at length, in Rymer, t. x. p. 734.

(3) Villaret, t. xiv. p. 446.

(4) Amelgard, from whose unpublished memoirs of Charles VII. and Louis XI. some valuable extracts are made in the Notice des Manuscrits, t. i. p. 403. attributes the delay in recovering Normandy solely to the king's slothfulness and sensuality. In fact, the people of that province rose upon the English and almost emancipated themselves with little aid from Charles.

Condition of France during the second English wars.

In these second English wars, we find little left of that generous feeling which had, in general, distinguished the contemporaries of Edward III. The very virtues which a state of hostility promotes are not proof against its long continuance, and sink at last into brutal fierceness. Revenge and fear excited the two factions of Orleans and Burgundy to all atrocious actions. The troops serving under partisans on detached expeditions according to the system of the war, lived at free quarters on the people. The histories of the time are full of their outrages, from which, as is the common case, the unprotected peasantry most suffered (1). Even those laws of war, which the courteous sympathies of chivalry had enjoined, were disregarded by a merciless fury. Garrisons surrendering after a brave defence were put to death. Instances of this are very frequent. Henry V. excepts Alain Blanchard, a citizen who had distinguished himself during the siege, from the capitulation of Rouen, and orders him to execution. At the taking of a town of Champagne, John of Luxemburg, the Burgundian general, stipulates that every fourth and sixth man should be at his discretion; which he exercises by causing them all to be hanged (2). Four hundred English from Pontoise, stormed by Charles VII., in 1441, are paraded in chains and naked through the streets of Paris, and thrown afterwards into the Seine. This infamous action cannot but be ascribed to the king (3).

Subsequent events in the reign of Charles VII.

At the expulsion of the English, France emerged from the chaos with an altered character and new features of government. The royal authority and supreme jurisdiction of the parliament were universally recognised. Yet there was a tendency towards insubordination left among the great nobility, arising in part from the remains of old feudal privileges, but still more from that lax administration, which, in the convulsive struggles of the war, had been suffered to prevail. In the south were some considerable vassals, the houses of Foix, Albret, and Armagnac, who, on account of their distance from the seat of empire, had always maintained a very independent conduct.

(1) Monstrelet, passim. A long metrical complaint of the people of France, curious as a specimen of versification, as well as a testimony to the misfortunes of the time, may be found in this historian, part i. fol. 321. Notwithstanding the treaty of Arras, the French and Burgundians made continual incursions upon each other's frontiers, especially about Laon, and in the Vermandois. So that the people had no help, says Monstrelet, si non de crier miserablement a Dieu leur createur vengeance; et que pis estoit, quand ils obtenoient aucun sauf-conduit d'aucuns capitaines, peu en estoit entretenu, mesmement tout d'un parti. pt. ii. f. 138. These pillagers were called Ecorcheurs, because they stripped the people of their shirts. And this name superseded that of Armagnacs, by which one side had hitherto been known. Even Xaintrailles and La Hire, two of the bravest champions of France, were disgraced by these habits of outrage. Ibid. fol. 144. 150. 175: Olivier de la Marche, in Collect. des Mémoires, t. viii. p. 95. t. v. p. 328.

Pour la plupart, says Villaret, se faire guerrier, ou voleur de grands chemins, signifioit la même chose.

(2) Monstrelet, part ii. f. 79. This John of Luxemburg, count de Ligny, was a distinguished captain on the Burgundian side, and for a long time would not acquiesce in the treaty of Arras. He disgraced himself by giving up to the duke of Bedford his prisoner Joan of Arc for 10,000 francs. The famous count of St. Pol was his nephew, and inherited his great possessions in the county of Vermandois. Monstrelet relates a singular proof of the good education which his uncle gave him. Some prisoners having been made in an engagement, si fut le jeune comte de St. Pol mis en voye de guerre; car le comte de Ligny son oncle lui en feit occire aucuns, le quel y prenoit grand plaisir, part ii. fol. 95.

(3) Villaret, t. xv. p. 327.

The dukes of Britany and Burgundy were of a more formidable character, and might rather be ranked among foreign powers, than privileged subjects. The princes, too, of the royal blood, who during the late reign, had learned to partake or contend for the management, were ill-inclined towards Charles VII., himself jealous, from old recollections, of their ascendency. They saw that the constitution was verging rapidly towards an absolute monarchy, from the direction of which they would studiously be excluded. This apprehension gave rise to several attempts at rebellion during the reign of Charles VII. and to the war, commonly entitled, for the Public Weal (du bien public), under Louis XI. Among the pretences alleged by the revolters in each of these, the injuries of the people were not forgotten (1); but from the people they received small support. Weary of civil dissension, and anxious for a strong government to secure them from depredation, the French had no inducement to intrust even their real grievances to a few malecontent princes, whose regard for the common good they had much reason to distrust. Every circumstance favoured Charles VII. and his son in the attainment of arbitrary power. The country was pillaged by military ruffians. Some of these had been led by the dauphin to a war in Germany, but the remainder still infested the high roads and villages. Charles established his companies of ordonnance, the basis of the French regular army, in order to protect the country from such depredators. They consisted of about nine thousand soldiers, all cavalry, of whom fifteen hundred were heavy-armed; a force not very considerable, but the first, except mere body-guards, which had been raised in any part of Europe, as a national standing army (2). These troops were paid out of the produce of a permanent tax, called the taille; an innovation still more important than the former. But the present benefit cheating the people, now prone to submissive habits, little or no opposition was made; except in Guienne, the inhabitants of which had speedy reason to regret the mild government of England, and vainly endeavoured to return to its protection (3).

(1) The confederacy formed at Nevers in 1441, by the dukes of Orleans and Bourbon, with many other princes, made a variety of demands, all relating to the grievances which different classes of the state, or individuals among themselves, suffered under the administration of Charles. These may be found at length in Monstrelet, p. ii. fol. 193.; and are a curious document of the change which was then working in the French constitution. In his answer, the king claims the right, in urgent cases, of levying taxes without waiting for the consent of the States-General.

(2) Olivier de la Marche speaks very much in favour of the companies of ordonnance, as having repressed the plunderers, and restored internal police. Collect. des Mémoires, t. viii. p. 148. Ameigard pronounces a vehement philippic against them; but it is probable that his observation of the abuses they had fallen into was confined to the reign of Louis XI. Notices des Manuscrits, ubi supra.

(3) The insurrection of Guienne in 1452, which for a few months restored that province to the English crown, is accounted for in the curious memoirs of Ameigard, above mentioned. It proceeded solely from the arbitrary taxes imposed by Charles VII. in order to defray the expenses of his regular army. The people of Bordeaux complained of exactions not only contrary to their ancient privileges, but to the positive conditions of their capitulation. But the king was deaf to such remonstrances. The province of Guienne, he says, then perceived that it was meant to subject it to the same servitude as the rest of France, where the leeches of the state boldly maintain, as a fundamental maxim, that the king has a right to tax all his subjects, how and when he pleases; which is to advance that in France no man has any thing

It was not long before the new despotism exhibited itself in its harshest character. Louis XI., son of Charles VII., who, during his father's reign, had been connected with the discontented princes, came to the throne greatly endowed with those virtues and vices, which conspire to the success of a king. Laborious vigilance in business, contempt of pomp, affability to inferiors, were his excellencies; qualities especially praiseworthy in an age characterized by idleness, love of pageantry, and insolence. To these virtues he added a perfect knowledge of all persons eminent for talents or influence in the countries with which he was connected, and a well-judged bounty, that thought no expense wasted to draw them into his service or interest. In the fifteenth century, this political art had hardly been known, except perhaps in Italy; the princes of Europe had contended with each other by arms, sometimes by treachery, but never with such complicated subtlety of intrigue. Of that insidious cunning, which has since been brought to perfection, Louis XI. may be deemed not absolutely the inventor, but the most eminent improver; and its success has led perhaps to too high an estimate of his abilities. Like most bad men he sometimes fell into his own snare, and was betrayed by his confidential ministers, because his confidence was generally reposed in the wicked. And his dissimulation was so notorious, his tyranny so oppressive, that he was naturally surrounded by enemies, and had occasion for all his craft to elude those rebellions and confederacies which might perhaps not have been raised against a more upright sovereign. At one time the monarchy was on the point of sinking before a combination which would have ended in dismembering France. This was the league denominated of the Public Weal, in which all the princes and great vassals of the French crown were concerned: the dukes of Britany, Burgundy, Alençon, Bourbon, the count of Dunois, so renowned for his valour in the English wars, the families of Foix and Armagnac: and, at the head of all, Charles duke of Berry, the king's brother and presumptive heir. So unanimous a combination was not formed without a strong provocation from the king, or at least without weighty grounds for distrusting his intentions; but the more remote cause of this confederacy, as of those which had been raised against Charles VII., was the critical position of the feudal aristocracy from the increasing power of the crown. This war of the Public Weal was in fact a struggle to preserve their independence;

Louis XI. 1461.

His character.

League denominated of the Public Weal.

1461

that he can call his own, and that the king can take all at his pleasure; the proper condition of slaves, whose peculium enjoyed by their master's permission belongs to him, like their persons, and may be taken away whenever he chuses. Thus situated, the people of Guienne, especially those of Bordeaux, alarmed themselves, and excited by some of the nobility, secretly sought about for means to regain their ancient freedom; and having still many connexions with persons of rank in England, they negotiated with them, etc. Notices des manuscrits, p. 433. The same cause is assigned to this revolution by Du Clercq, also a contemporary writer, living in the dominions of Burgundy. Collection des Mémoires, t. ix. p. 400. Villaret has not known, or not chosen to know, any thing of the matter.

and from the weak character of the duke of Berry, whom they would, if successful, have placed upon the throne, it is possible that France might have been in a manner partitioned among them, in the event of their success, or at least that Burgundy and Britany would have thrown off the sovereignty that galled them.

The strength of the confederates in this much exceeded that of the king; but it was not judiciously employed, and after an indecisive battle at Montlhery, they failed in the great object of reducing Paris, which would have obliged Louis to fly from his dominions. It was his policy to promise every thing, in trust that fortune would afford some opening to repair his losses, and give scope to his superior prudence. Accordingly, by the treaty of Conflans, he not only surrendered afresh the towns upon the Somme, which he had lately redeemed from the duke of Burgundy, but invested his brother with the duchy of Normandy as his apanage.

Apanages.

The term apanage denotes the provision made for the younger children of a king of France. This always consisted of lands and feudal superiorities, held of the crown by the tenure of peerage. It is evident that this usage, as it produced a new class of powerful feudatories, was hostile to the interests and policy of the sovereign, and retarded the subjugation of the ancient aristocracy. But an usage coeval with the monarchy was not to be abrogated, and the scarcity of money rendered it impossible to provide for the younger branches of the royal family by any other means. It was restrained, however, as far as circumstances would permit. Philip IV. declared that the county of Poitiers, bestowed by him on his son, should revert to the crown on the extinction of male heirs. But this, though an important precedent, was not, as has often been asserted, a general law. Charles V. limited the apanages of his own sons to twelve thousand livres of annual value in land. By means of their apanages and through the operation of the Salic law, which made their inheritance of the crown a less remote contingency, the princes of the blood royal in France were at all times (for the remark is applicable long after Louis XI.) a distinct and formidable class of men, whose influence was always disadvantageous to the reigning monarch, and, in general, to the people.

No apanage had ever been granted in France so enormous as the duchy of Normandy. One third of the whole national revenue, it is declared, was derived from that rich province. Louis could not therefore sit down under such terms as, with his usual insincerity, he had accepted at Conflans. In a very short time he attacked Normandy, and easily compelled his brother to take refuge in Britany; nor were his enemies ever able to procure the restitution of Charles's apanage. During the rest of his reign, Louis had powerful coalitions to withstand; but his prudence and compliance with circumstances, joined to some mixture of good fortune, brought him

safely through his perils. The duke of Britany, a prince of moderate talents, was unable to make any formidable impression, though generally leagued with the enemies of the king. The less powerful vassals were successfully crushed by Louis with decisive vigour: the duchy of Alençon was confiscated; the count of Armagnac was assassinated: the duke of Nemours, and the constable of St. Pol, a politician as treacherous as Louis, who had long betrayed both him and the duke of Burgundy, suffered upon the scaffold. The king's brother, Charles, after disquieting him for many years, died suddenly in Guienne, which had finally been granted as his apanage, with strong suspicions of having been poisoned by the king's contrivance. Edward IV. of England was too dissipated and too indolent to be fond of war; and, though he once entered France with an army more considerable than could have been expected after such civil bloodshed as England had witnessed, he was induced, by the stipulation of a large pension, to give up the enterprise (1). So terrible was still in France the apprehension of an English war, that Louis prided himself upon no part of his policy so much as the warding this blow. Edward shewed a desire to visit Paris; but the king gave him no invitation, lest, he said, his brother should find some handsome women there, who might tempt him to return in a different manner. Hastings, Howard, and others of Edward's ministers, were secured by bribes in the interest of Louis, which the first of these did not scruple to receive at the same time from the duke of Burgundy (2).

1472

1475

This was the most powerful enemy whom the craft of Louis had to counteract. In the last days of the feudal system, when the house of Capet had almost achieved the subjugation of those proud vassals among whom it had been originally numbered, a new antagonist sprung up to dispute the field against the crown. John king of France granted the duchy of Burgundy, by way of apanage, to his third son, Philip. By his marriage with Margaret, heiress of Louis count of Flanders, Philip acquired that province, Artois, the *county* of Burgundy (of Franche-Comté), and the Nivernois. Philip the Good, his grandson, who carried the prosperity of this family to its height, possessed himself, by various titles, of the several other provinces which composed the Netherlands. These were fiefs of the empire, but latterly not much dependent upon it, and alienated by their owners without its consent. At the peace of Arras, the districts of Macon and Auxerre were absolutely ceded to Philip, and great part of Picardy

House of Burgundy.

Its successive acquisitions.

(1) The army of Edward consisted of 1,500 men at arms, and 14,000 archers; the whole very well appointed. Comines, t. xi. p. 238. There seems to have been a great expectation of what the English would do, and great fears entertained by Louis, who grudged no expense to get rid of them.

(2) Comines, l. vi. c. 2. Hastings had the mean cunning to refuse to give his receipt for the pension he took from Louis XI. "This present, he said to the king's agent, comes from your master's good pleasure, and not at my request; and if you mean I should receive it, you may put it here into my sleeve, but you shall have no discharge from me; for I will not have it said, that the Great Chamberlain of England is a pensioner of the king of France, nor have my name appear in the books of the Chambre des Comptes." Ibid.

conditionally made over to him, redeemable on the payment of four hundred thousand crowns (1). These extensive, though not compact dominions, were abundant in population and wealth, fertile in corn, wine, and salt, and full of commercial activity. Thirty years of peace which followed the treaty of Arras, with a mild and free government, raised the subjects of Burgundy to a degree of prosperity quite unparalleled in these times of disorder; and this was displayed in general sumptuousness of dress and feasting. The court of Philip and of his son Charles was distinguished for its pomp and riches, for pageants and tournaments; the trappings of chivalry, perhaps without its spirit: for the military character of Burgundy had been impaired by long tranquillity (2).

Character of Charles duke of Burgundy.

During the lives of Philip and Charles VII., each understood the other's rank, and their amity was little interrupted. But their successors, the most opposite of human kind in character, had one common quality, ambition, to render their antipathy more powerful. Louis was eminently timid and suspicious in policy; Charles intrepid beyond all men, and blindly presumptuous: Louis stooped to any humiliation to reach his aim; Charles was too haughty to seek the fairest means of strengthening his party. An alliance of his daughter with the duke of Guienne, brother of Louis, was what the malecontent French princes most desired, and the king most dreaded: but Charles, either averse to any French connexion, or willing to keep his daughter's suitors in dependence, would never directly accede to that, or any other proposition for her marriage. On Philip's death, in 1467, he inherited a great treasure, which he soon wasted in the prosecution of his schemes. These were so numerous and vast, that he had not time to live, says Comines, to complete them, nor would one half of Europe have contented him. It was his intention to assume the title of King; and the emperor Frederic III. was at one time actually on his road to confer this dignity, when some suspicion caused him to retire; and the project was never renewed (3).

(1) The duke of Burgundy was personally excused from all homage and service to Charles VII.; but, if either died, it was to be paid by the heir, or to the heir. Accordingly, on Charles's death, Philip did homage to Louis. This exemption can hardly therefore have been inserted to gratify the pride of Philip, as historians suppose. Is it not probable, that, during his resentment against Charles, he might have made some vow never to do him homage; which this reservation in the treaty was intended to preserve?

It is remarkable that Villaret says, the duke of Burgundy was positively excused by the 25th article of the peace of Arras from doing homage to Charles, or *his successors kings of France*, t. xvi. p. 404. For this assertion too he seems to quote the Trésor des Chartes, where probably the original treaty is preserved. Nevertheless, it appears, otherwise, as published by Monstrelet at full length, who could have no motive to falsify it; and Philip's conduct in doing homage to Louis is hardly compatible with Villaret's assertion. Daniel copies Monstrelet without any observation. In the same treaty, Philip is entitled, Duke by the grace of God; which was reckoned a mark of independence, and not usually permitted to a vassal.

(2) P. de Comines, l. i. c. 2. and 3.; l. v. c. 9. Du Clercq, in Collection des Mémoires, t. ix. p. 389. In the investiture granted by John to the first Philip of Burgundy, a reservation is made, that the royal taxes shall be levied throughout that apanage. But during the long hostility between the kingdom and duchy, this could not have been enforced: and by the treaty of Arras, Charles surrendered all right to tax the duke's dominions. Monstrelet, f. 114.

(3) Garnier, t. xviii. p. 62. It is observable, that Comines says not a word of this; for which Garnier seems to quote Belcarius, a writer of the sixteenth age. But even Philip, when Morvilliers, Louis's chancellor, used menaces towards him, interrupted the orator with these words: Je veux que chacun sache que, si j'eusse voulu, je fusse roi. Villaret, t. xvii. p. 44.

It is evident that if Charles's capacity had borne any proportion to his pride and courage, or if a prince less politic than Louis XI. had been his contemporary in France, the province of Burgundy must have been lost to the monarchy. For several years these great rivals were engaged, sometimes in open hostility, sometimes in endeavours to overreach each other, but Charles, though not much more scrupulous, was far less an adept in these mysteries of politics than the king.

Insubordination of the Flemish cities.

Notwithstanding the power of Burgundy, there were some disadvantages in its situation. It presented (I speak of all Charles's dominions under the common name, Burgundy) a very exposed frontier on the side of Germany and Switzerland, as well as France; and Louis exerted a considerable influence over the adjacent princes of the empire, as well as the united cantons. The people of Liege, a very populous city, had for a long time been continually rebelling against their bishops, who were the allies of Burgundy: Louis was of course not backward to foment their insurrections; which sometimes gave the dukes a good deal of trouble. The Flemings, and especially the people of Ghent, had been during a century noted for their republican spirit and contumacious defiance of their sovereign. Liberty never wore a more unamiable countenance than among these burghers, who abused the strength she gave them by cruelty and insolence. Ghent, when Froissart wrote, about the year 1400, was one of the strongest cities in Europe, and would have required, he says, an army of two hundred thousand men to besiege it on every side, so as to shut up all access by the Lys and Scheldt. It contained eighty thousand men of age to bear arms (1); a calculation which, although, as I presume, much exaggerated, is evidence of great actual populousness. Such a city was absolutely impregnable, at a time when artillery was very imperfect both in its construction and management. Hence, though the citizens of Ghent were generally beaten in the field with great slaughter, they obtained tolerable terms from their masters, who knew the danger of forcing them to a desperate defence.

No taxes were raised in Flanders, or indeed throughout the dominions of Burgundy, without consent of the three estates. In the time of Philip, not a great deal of money was levied upon the people; but Charles obtained every year a pretty large subsidy, which he expended in the hire of Italian and English mercenaries (2). An

(1) Froissart, part. ii. c. 67.

(2) Commines, l. iv. c. 13. It was very reluctantly that the Flemings granted any money. Philip once begged for a tax on salt, promising never to ask any thing more; but the people of Ghent, and, in imitation of them, the whole county, refused it. Du Clercq, p. 389. Upon his pretence of taking the cross, they granted him a subsidy, though less than he had requested, on condition that it should not be levied, if the crusade did not take place, which put an end to the attempt. The states knew well, that the duke would employ any money they gave him in keeping up a body of gens d'armes like his neighbour, the king of France; and though the want of such a force exposed their country to pillage, they were too good patriots to place the means of enslaving it in the hands of their sovereign. Grand doute faisoient les sujets, et pour plusieurs raisons, de se mettre en cette sujetion, ou ils voyoient le royaume de France, a cause de ses gens

almost uninterrupted success had attended his enterprizes for a length of time, and rendered his disposition still more overweening. His first failure was before Nuz, a little town near Cologne, the possession of which would have made him nearly master of the whole course of the Rhine, for he had already obtained the landgraviate of Alsace. Though compelled to raise the siege, he succeeded in occupying, next year, the duchy of Lorraine. But his overthrow was reserved for an enemy whom he despised, and whom none could have thought equal to the contest. The Swiss had given him some slight provocation, for which they were ready to atone; but Charles was unused to forbear; and perhaps Switzerland came within his projects of conquest. At Granson, in the Pays de Vaud, he was entirely routed, with more disgrace than slaughter (1). But, having reassembled his troops, and met the confederate army of Swiss and Germans at Morat, near Friburg he was again defeated with vast loss. On this day the power of Burgundy was dissipated: deserted by his allies, betrayed by his mercenaries, he set his life upon another cast at Nancy, desperately giving battle to the duke of Lorraine with a small dispirited army, and perished in the engagement.

1474

1476

Defeats of Charles at Granson and Morat.

His death. 1477

Now was the moment, when Louis, who had held back while his enemy was breaking his force against the rocks of Switzerland, came to gather a harvest which his labour had not reaped. Charles left an only daughter, undoubted heiress of Flanders and Artois, as well as of his dominions out of France, but whose right of succession to the duchy of Burgundy was more questionable. Originally, the great fiefs of the crown descended to females; and this was the case with respect to the two first mentioned. But John had granted Burgundy to his son Philip by way of apanage; and it was contended that apanages reverted to the crown in default of male heirs. In the form of Philip's investiture, the duchy was granted to him and his lawful heirs, without designation of sex. The construction, therefore, must be left to the established course of law. This, however was by no means acknowledged by Mary, Charles's daughter, who maintained, both that no general law restricted apanages to male heirs, and that Burgundy had always been considered as a feminine fief, John himself having possessed it, not by reversion as king, (for descendants of the first dukes were then living,) but by inhe-

Claim of Louis XI. to the succession of Burgundy.

d'armes. A la vérité, leur grand doute n'estoit pas sans cause: car quand il se trouva cinq cents hommes d'armes, la volonté lui vint d'en avoir plus, et de plus hardiment entreprendre contre tous ses voisins. Comines, l. iii. c. 4. 9.

Du Clercq, a contemporary writer of very good authority, mentioning the story of a certain widow who had remarried the day after her husband's death, says that she was in some degree excusable, because it was the practice of the duke and his officers to force rich widows into marrying their soldiers or other servants, t. ix. p. 418.

(1) A famous diamond, belonging to Charles of Burgundy, was taken in the plunder of his tent by the Swiss at Granson. After several changes of owners, most of whom were ignorant of its value, it became the first jewel in the French crown. Garnier, t. xviii. p. 361.

ritance derived through females (1). Such was this question of succession between Louis XI. and Mary of Burgundy, upon the merits of whose pretensions I will not pretend altogether to decide, but shall only observe, that if Charles had conceived his daughter to be excluded from this part of his inheritance, he would probably, at Conflans or Peronne, where he treated upon the vantage-ground, have attempted at least to obtain a renunciation of Louis's claim.

Conduct of Louis.

There was one obvious mode of preventing all further contest, and of aggrandizing the French monarchy far more than by the reunion of Burgundy. This was the marriage of Mary with the dauphin, which was ardently wished in France. Whatever obstacles might occur to this connexion, it was natural to expect on the opposite side; from Mary's repugnance to an infant husband, or from the jealousy which her subjects were likely to entertain, of being incorporated with a country worse governed than their own. The arts of Louis would have been well employed in smoothing these impediments (2). But he chose to seize upon as many towns as, in those critical circumstances, lay exposed to him, and stripped the young duchess of Artois and Franche-Comté. Expectations of the marriage he sometimes held out, but, as it seems, without sincerity. Indeed he contrived irreconcileably to alienate Mary by a shameful perfidy, betraying the ministers whom she had entrusted upon a secret mission, to the people of Ghent, who put them to the torture, and afterwards to death, in the presence and amidst the tears and supplications of their mistress. Thus the French alliance becoming odious in Burgundy, this prin-

1477

cess married Maximilian of Austria, son of the emperor Frederic; a connexion which Louis strove to prevent, though it was impossible then to foresee that it was ordained to retard the growth of France, and to bias the fate of Europe during three hundred years. This war lasted till after the death of Mary, who left one son Philip, and one daughter Margaret. By a treaty of peace concluded at Arras, in 1482, it was agreed that this daughter should become the dauphin's wife, with Franche-Comté

(1) It is advanced with too much confidence by several French historians, either that the ordinances of Philip IV. and Charles V. constituted a general law against the descent of apanages to female heirs; or that this was a fundamental law of the monarchy. Duclos, Hist. de Louis XI, t. ii. p. 252. Garnier, Hist. de France, t. xviii. p. 258. The latter position is refuted by frequent instances of female succession; thus Artois had passed by a daughter of Louis le Male into the house of Burgundy. As to the above mentioned ordinances, the first applies only to the county of Poitiers; the second does not contain a syllable that relates to succession. (Ordonnances des Rois, t. vi. p. 54.) The doctrine of excluding female heirs was more consonant to the pretended Salic law, and the recent principles as to inalienability of domain, than to the analogy of feudal rules and precedents. M. Gaillard, in his Observations sur l'Histoire de Velly, Villaret, et Garnier, has a judicious note on this subject, t. iii. p. 304.

(2) Robertson, as well as some other moderns have maintained, on the authority of Comines, that Louis XI. ought in policy to have married the young princess to the count of Angouleme, father of Francis I., a connexion which she would not have disliked. But certainly nothing could have been more adverse to the interest of the French monarchy than such a marriage, which would have put a new house of Burgundy at the head of those princes, whose confederacies had so often endangered the crown. Comines is one of the most judicious of historians; but his sincerity may be rather doubtful in the opinion above mentioned; for he wrote in the reign of Charles VIII., when the count of Angouleme was engaged in the same faction as himself.

and Artois, which Louis held already, for her dowery, to be restored in case the marriage should not take effect. The homage of Flanders, and appellant jurisdiction of the parliament over it, were reserved to the crown.

Sickness and death of Louis XI.

Meanwhile Louis was lingering in disease and torments of mind, the retribution of fraud and tyranny. Two years before his death he was struck with an apoplexy, from which he never wholly recovered. As he felt his disorder increasing, he shut himself up in a palace near Tours, to hide from the world the knowledge of his decline (1). His solitude was like that of Tiberius at Capræ, full of terror and suspicion, and deep consciousness of universal hatred. All ranks, he well knew, had their several injuries to remember: the clergy, whose liberties he had sacrificed to the see of Rome, by rovoking the Pragmatic Sanction of Charles VII.; the princes, whose blood he had poured upon the scaffold; the parliament, whose course of justice he had turned aside; the commons, who groaned under his extortion, and were plundered by his soldiery (2). The palace, fenced with portcullises and spikes of iron, was guarded by archers and crossbowmen, who shot at any that approached by night. Few entered this den; but to them he shewed himself in magnificent apparel, contrary to his former custom, hoping thus to disguise the change of his meagre body. He distrusted his friends and kindred, his daughter and his son, the last of whom he had not suffered even to read or write, lest he should too soon become his rival. No man ever so much feared death, to avert which he stooped to every meanness and sought every remedy. His physician had sworn, that if he were dismissed, the king would not survive a week; and Louis, enfeebled by sickness and terror, bore the rudest usage from this man, and endeavoured to secure his services by vast rewards. Always credulous in relics, though seldom restrained by superstition from any crime (3), he eagerly bought up treasures of this sort, and even procured a Calabrian hermit, of noted sanctity, to journey as far as Tours, in order to restore his health. Philip de Comines, who attended him during this infirmity, draws a parallel between the torments he then endured, and those he had formerly inflicted on others. Indeed the whole of his life was vexation of spirit. "I have known

(1) For Louis's illness and death, see Comines, l. vi. c. 7—12., and Garnier, t. xix. p. 112. etc. Plessis, his last residence, about an English mile from Tours, is now a dilapidated farm-house, and can never have been a very large building. The vestiges of royalty about it are few; but the principal apartments have been destroyed, either in the course of ages, or at the revolution.

(2) See a remarkable chapter in Philip de Comines, l. iv. c. 19. wherein he tells us that Charles VII. had never raised more than 1,800,000 francs a year in taxes; but Louis XI. at the time of his death raised 4,800,000, exclusive of some military impositions: et surement c'estoit compassion de voir et scavoir la pauvrété du peuple. In this chapter he declares his opinion, that no king can justly levy money on his subjects without their consent, and repels all common arguments to the contrary.

(3) An exception to this was when he swore by the cross of St. Lo, after which he feared to violate his oath. The constable of St. Pol, whom Louis invited with many assurances to court, bethought himself of requiring this oath, before he trusted his promises, which the king refused; and St. Pol prudently staid away. Garn. t. xviii. p. 72. Some report, that he had a similar respect for a leaden image of the Virgin, which he wore in his hat; as alluded to by Pope:

"A perjured prince a leaden saint revere."

him (says Comines), and been his servant in the flower of his age, and in the time of his greatest prosperity; but never did I see him without uneasiness and care. Of all amusements he loved only the chase, and hawking in its season. And in this he had almost as much uneasiness as pleasure; for he rode hard and got up early, and sometimes went a great way, and regarded no weather: so that he used to return very weary, and almost ever in wrath with some one. I think that from his childhood he never had any respite of labour and trouble to his death. And I am certain that if all the happy days of his life, in which he had more enjoyment than uneasiness, were numbered, they would be found very few; and at least that they would be twenty of sorrow for every one of pleasure (1)."

Charles VIII. 1483

Charles VIII. was about thirteen years old, when he succeeded his father Louis. Though the law of France fixed the majority of her kings at that age, yet it seems not to have been strictly regarded on this occasion, and at least Charles was a minor by nature, if not by law. A contest arose therefore for the regency, which Louis had entrusted to his daughter Anne, wife of the lord de Beaujeu, one of the Bourbon family. The duke of Orleans, afterwards Louis XII., claimed it as presumptive heir of the crown, and was seconded by most of the princes. Anne, however, maintained her ground, and ruled France for several years in her brother's name with singular spirit and address, in spite of the rebellions which the Orleans party raised up against her. These were supported by the duke of Britany, the last of the great vassals of the crown, whose daughter, as he had no male issue, was the object of as many suitors as Mary of Burgundy.

Affairs of Britany.

The duchy of Britany was peculiarly circumstanced. The inhabitants, whether sprung from the ancient republicans of Armorica, or, as some have thought, from an emigration of Britons during the Saxon invasion, had not originally belonged to the body of the French monarchy. They were governed by their own princes and laws; though tributary, perhaps, as the weaker to the stronger, to the Merovingian kings (2). In the ninth century, the dukes of Britany did homage to Charles the Bald, the right of which was transferred afterwards to the dukes of Normandy. This formality, at that time no token of real subjection, led to consequences beyond the views of either party. For when the feudal chains, that had hung so loosely upon the shoulders of the great vassals, began to be straitened by the dexterity of the court, Britany found itself drawn among the rest to the same centre. The old

(1) Comines, l. vi. c. 13.

(2) Gregory of Tours says, that the Bretons were subject to France from the death of Clovis, and that their chiefs were styled counts, not kings, l. iv. c. 4. However, it seems clear from Nigellus, a writer of the life of Louis the Debonair, that they were almost independent in his time. There was even a march of the Britannic frontier which separated it from France; and they had a king of their own. It is hinted, indeed, that they had been formerly subject; for after a victory of Louis over them, Nigellus says, imperio sociat *perdita regna diu*. In the next reign of Charles the Bald, Hincmar tells us, regnum undique a Paganis, et falsis Christianis, scilicet Britonibus, est circumscriptum. Epist. 18, See too Capitularia Car. Calvi. A. D. 877. tit. 23.

privileges of independence were treated as usurpation; the dukes were menaced with confiscation of their fief, their right of coining money disputed, their jurisdiction impaired by appeals to the parliament of Paris. However they stood boldly upon their right, and always refused to pay *liege-homage,* which implied an obligation of service to the lord, in contra-distinction to *simple homage,* which was a mere symbol of feudal dependence (1).

About the time that Edward III. made pretension to the crown of France, a controversy somewhat resembling it arose in the duchy of Britany, between the families of Blois and Montfort. This led to a long and obstinate war, connected all along, as a sort of underplot, with the great drama of France and England. At last, Montfort, Edward's ally, by the defeat and death of his antagonist, obtained the duchy, of which Charles V. soon after gave him the investiture. This prince and his family were generally inclined to English connexions; but the Bretons would seldom permit them to be effectual. Two cardinal feelings guided the conduct of this brave and faithful people; the one, an attachment to the French nation and monarchy in opposition to foreign enemies; the other, a zeal for their own privileges, and the family of Montfort, in opposition to the encroachments of the crown. In Francis II., the present duke, the male line of that family was about to be extinguished. His daughter Anne was naturally the object of many suitors, among whom were particularly distinguished the duke of Orleans, who seems to have been preferred by herself; the lord of Albret, a member of the Gascon family of Foix, favoured by the Breton nobility, as most likely to preserve the peace and liberties of their country, but whose age rendered him not very acceptable to a youthful princess; and Maximilian, king of the Romans. Britany was rent by factions, and overrun by the armies of the regent of France, who did not lose this opportunity of interfering with its domestic troubles and of persecuting her private enemy, the duke of Orleans. Anne of Britany, upon her father's death, finding no other means of escaping the addresses of Albret, was married, by proxy, to Maximilian. This however aggravated the evils of the country, since France was resolved at all events to break off so dangerous a connexion. And as Maximilian himself was unable, or took not sufficient pains, to relieve his betrothed wife from her embarrassments, she was ultimately compelled to accept the hand of Charles VIII. He had long been engaged by the treaty of Arras to marry the daughter of Maximilian, and that princess was educated at the French court. But this engagement had not prevented several years of hostilities, and continual intrigues with the towns of Flanders against Maximilian. The double injury which the latter sustained

1489

Marriage of Charles VIII. to the duchess of Britany.

(1) Villaret, t. xii. p. 82.; t. xv. p. 199.

in the marriage of Charles with the heiress of Britany seemed likely to excite a protracted contest; but the king of France, who had other objects in view, and perhaps was conscious that he had not acted a fair part, soon came to an accommodation, by which he restored Artois and Franche-Comté.

1492 France was now consolidated into a great kingdom; the feudal system was at an end. The vigour of Philip-Augustus, the paternal wisdom of St. Louis, the policy of Philip the Fair, had laid the foundations of a powerful monarchy, which neither the arms of England, nor seditions of Paris, nor rebellions of the princes, were able to shake. Besides the original fiefs of the French crown, it had acquired two countries beyond the Rhone, which properly depended only upon the empire, Dauphiné, under Philip of Valois, by the bequest of Humbert, the last of its princes, and Provence, under Louis XI., by that of Charles of Anjou (1).

1481 Thus having conquered herself, if I may use the phrase, and no longer apprehensive of any foreign enemy, France was prepared, under a monarch flushed with sanguine ambition, to carry her arms into other countries, and to contest the prize of glory and power upon the ample theatre of Europe (2).

(1) The country now called Dauphiné formed part of the kingdom of Arles or Provence, bequeathed by Rodolph III. to the emperor Conrad II. But the dominion of the empire over these new acquisitions being little more than nominal, a few of the chief nobility converted their respective fiefs into independent principalities. One of these was the lord, or Dauphin of Vienne, whose family became ultimately masters of the whole province. Humbert, the last of these, made John, son of Philip of Valois, his heir, on condition that Dauphiné should be constantly preserved as a separate possession, not incorporated with the kingdom of France. This bequest was confirmed by the emperor Charles IV., whose supremacy over the province was thus recognised by the kings of France, though it soon came to be altogether disregarded.

Provence, like Dauphiné, was changed from a feudal dependency to a sovereignty, in the weakness and dissolution of the kingdom of Arles, about the early part of the eleventh century. By the marriage of Douce, heiress of the first line of sovereign counts, with Raymond Berenger, count of Barcelona, in 1112, it passed into that distinguished family. In 1167, it was occupied or usurped by Alfonso II., king of Arragon, a relation, but not heir, of the house of Berenger. Alfonso bequeathed Provence to his second son, of the same name, from whom it descended to Raymond Berenger IV. This count dying without male issue in 1245, his youngest daughter Beatrice took possession by virtue of her father's testament. But this succession being disputed by other claimants, and especially by Louis XI., who had married her eldest sister, she compromised differences by marrying Charles of Anjou, the king's brother. The family of Anjou reigned in Provence, as well as in Naples, till the death of Joan in 1382, who, having no children, adopted Louis, duke of Anjou, brother of Charles V., as her successor. This second Angevin line ended in 1481 by the death of Charles III., though Renier, duke of Lorraine, who was descended through a female, had a claim which it does not seem easy to repel by argument. It was very easy however for Louis XI., to whom Charles III. had bequeathed his rights, to repel it by force, and accordingly he took possession of Provence, which was permanently united to the crown by letters patent of Charles VIII. in 1486.*

(2) The principal authority, exclusive of original writers, on which I have relied for this chapter, is the history of France by Velly, Villaret, and Garnier; a work which, notwithstanding several defects, has absolutely superseded those of Mezeray and Daniel. The part of the Abbé Velly comes down to the middle of the eighth volume, (12mo. edition,) and of the reign of Philip de Valois. His continuator Villaret was interrupted by death in the seventeenth volume, and in the reign of Louis XI. In my references to this history, which for common facts I have not thought it necessary to make, I have merely named the author of the particular volume which I quote. This has made the above explanation convenient, as the reader might imagine that I referred to three distinct works. Of these three historians, Garnier, the last, is the most judicious, and, I believe, the most accurate. His prolixity, though a material defect, and one which has occasioned the work itself to become an immeasurable undertaking, which could never be completed on the same scale, is chiefly occasioned by too great a regard to details, and is more tolerable than a similar fault in Villaret, proceeding from a love of idle declamation and sentiment. Villaret, however, is not without merits. He embraces, perhaps more fully than his predecessor Velly, those collateral branches of history which an enlightened reader requires almost in preference to civil transactions, the laws, manners, literature, and in general the

* Art de vérifier les Dates, t. ii, p. 445. — Garnier, t. xix, pp. 57. 474.

CHAPTER II.

ON THE FEUDAL SYSTEM, ESPECIALLY IN FRANCE.

PART I.

State of ancient Germany—Effects of the Conquest of Gaul by the Franks—Tenures of Land—Distinction of Laws—Constitution of the ancient Frank Monarchy—Gradual Establishment of Feudal Tenures—Principles of a Feudal Relation—Ceremonies of Homage and Investiture — Military Service — Feudal Incidents of Relief, Aid, Wardship, etc. — Different Species of Fiefs—Feudal Law-books.

Political state of ancient Germany.

Germany, in the age of Tacitus, was divided among a number of independent tribes, differing greatly in population and importance. Their country, overspread with forests and morasses, afforded little arable land, and the cultivation of that little was inconstant. Their occupations were principally the chase and pasturage; without cities, or even any contiguous dwellings. They had kings, elected out of particular families; and other chiefs, both for war and administration of justice, whom merit alone recommended to the public choice. But the power of each was greatly limited; and the decision of all leading questions, though subject to the previous deliberation of the chieftains, sprung from the free voice of a popular assembly (1). The principal men, however, of a German tribe fully partook of that estimation, which is always the reward of valour, and commonly of birth. They were surrounded by a cluster of youths, the most gallant and ambitious of the nation, their pride at home, their protection in the field; whose ambition was flattered, or gratitude conciliated, by such presents as a leader of barbarians could confer. These were the institutions of the people who overthrew the empire of Rome, congenial to the spirit of infant societies, and such as travellers have found among nations in the same stage of manners throughout the world. And, although in the lapse of four centuries between the ages of Tacitus and Clovis, some change may have been wrought by long intercourse with the Romans, yet the foundations of their political system were unshaken.

whole domestic records of a nation. These subjects are not always well treated; but the book itself, to which there is a remarkably full index, forms upon the whole a great repository of useful knowledge. Villaret had the advantage of officia access to the French archives, by which he has no doubt enriched his history; but his references are indistinct, and his composition breathes an air of rapidity and want of exactness. Velly's characteristics are not very dissimilar. The style of both is exceedingly bad, as has been severely noticed, along with their other defects, by Gaillard, in Observations sur l'histoire de Velly, Villaret, et Garnier. (4 vols. 12mo. Paris, 1806.)

(1) De minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum penes plebem arbitrium est, apud principes *pertractentur*. Tac. de Mor. Germ. c. xi. Acidalius and Grotius contend for *prætractentur;* which would be neater, but the same sense appears to be conveyed by the common reading.

Partition of lands in conquered provinces.

When these tribes from Germany and the neighbouring countries poured down upon the empire, and began to form permanent settlements, they made a partition of the lands in the conquered provinces between themselves and the original possessors. The Burgundians and Visigoths took two thirds of their respective conquests, leaving the remainder to the Roman proprietor. Each Burgundian was quartered, under the gentle name of guest, upon one of the former tenants, whose reluctant hospitality confined him to the smaller portion of his estate (1). The Vandals in Africa, a more furious race of plunderers, seized all the best lands (2). The Lombards of Italy took a third part of the produce. We cannot discover any mention of a similar arrangement in the laws or history of the Franks. It is, however, clear that they occupied by public allotment, or individual pillage, a great portion of the lands of France.

Alodial and Salic lands.

The estates possessed by the Franks, as their property, were termed *alodial;* a word which is sometimes restricted to such as had descended by inheritance (3). These were subject to no burthen except that of public defence. They passed to all the children equally, or, in their failure, to the nearest kindred (4). But of these alodial possessions, there was a particular species, denominated Salic, from which females were expressly excluded. What these lands were, and what was the cause of the exclusion, has been much disputed. No solution seems more probable, than that the ancient lawgivers of the Salian Franks (5) prohibited females from inheriting the lands assigned to the nation upon its conquest of Gaul, both in compliance with their ancient usages, and in order to secure the military service of every proprietor. But lands subsequently acquired, by purchase or other means, though equally bound to the public defence, were relieved from the severity of this rule, and presumed not to belong to the class of Salic (6).

(1) Leg. Burgund. c. 54. 55.

(2) Procopius de Bello Vandal. l. i. c. 5.

(3) Alodial lands are commonly opposed to beneficiary or feudal; the former being strictly proprietary, while the latter depended upon a superior. In this sense the word is of continual recurrence in ancient histories, laws, and instruments. It sometimes, however, bears the sense of *inheritance;* and this seems to be its meaning in the famous 62d chapter of the Salic law, de Alodis. Alodium interdum opponitur comparato, says Du Cange, in formulis veteribus. Hence in the charters of the eleventh century, hereditary fiefs are frequently termed alodia. Recueil des Historiens de France. t. xi. préface. Vaissette, Hist. de Languedoc, t. ii. p. 109.

(4) Leg. Salicæ, c. 62.

(5) The salic laws appear to have been framed by a Christian prince, and after the conquest of Gaul. They are therefore not older than Clovis. Nor can they be much later, since they were altered by one of his sons.

(6) By the German customs, women, though treated with much respect and delicacy, were not endowed at their marriage. Dotem non uxor merito, sed maritus uxori confert. Tacitus, c. 18. A similar principle might debar them of inheritance in fixed possessions. Certain it is, that the exclusion of females was not unfrequent among the Teutonic nations. We find it in the laws of the Thuringians and of the Saxons; both ancient codes, though not free from interpolation. Leibnitz, Scriptores Rerum Brunswicensium, t. i. pp. 81. and 83. But this usage was repugnant to the principles of Roman law, which the Franks found prevailing in their new country, and to the natural feeling which leads a man to prefer his own descendants to collateral heirs. One of the precedents in Marculfus, (l. ii. form. 12.) calls the exclusion of females, diuturna et impia consuetudo. In another, a father addresses his daughter: Omnibus non habetur incognitum, quod, sicut lex Salica continet, de rebus meis, *quod mihi ex alode parentum meorum obvenit*, apud germanos tuos filios meos minime in hæreditate succedere poteras. Formulæ Marculfo adjectæ, 49. These precedents are supposed to have been compiled about the latter end of the seventh century.

Hence, in the Ripuary law, the code of a tribe of Franks settled upon the banks of the Rhine, and differing rather in words than in substance from the Salic law, which it serves to illustrate, it is said, that a woman cannot inherit her grandfather's estate (hæreditas aviatica), distinguishing such family property from what the father might have acquired (1). And Marculfus uses expressions to the same effect. There existed, however, a right of setting aside the law, and admitting females to succession by testament. It is rather probable, from some passages in the Burgundian code, that even the lands of partition (sortes Burgundionum) were not restricted to male heirs (2). And the Visigoths admitted women on equal terms to the whole inheritance.

Roman natives of Gaul.

A controversy has been maintained in France, as to the condition of the Romans, or rather, the provincial inhabitants of Gaul, after the invasion of Clovis. But neither those who have considered the Franks as barbarian conquerors, enslaving the former possessors, nor the Abbé du Bos, in whose theory they appear as allies and friendly inmates, are warranted by historical facts. On the one hand, we find the Romans not only possessed of property, and governed by their own laws, but admitted to the royal favour, and the highest offices (3); while the bishops and clergy, who were generally of that nation (4), grew up continually in popular estimation, in riches, and in temporal sway. Yet it is undeniable, that a marked line was drawn at the outset between the conquerors and the conquered. Though one class of Romans retained estates of their own, yet there was another, called tributary, who seem to have cultivated those of the Franks, and were scarcely raised above the condition of predial servitude. But no distinction can be more unequivocal than that which was established between the two nations, in the *weregild,* or composition for homicide. Capital punishment for murder was contrary to the spirit of the Franks, who, like most barbarous nations, would have thought the loss of one citizen ill repaired by that of another. The weregild was paid to the relations of the slain, according to a legal rate. This was fixed by the Salic law at six hundred solidi for an Antrustion of the king;

(1) C. 86.

(2) I had in former editions asserted the contrary of this, on the authority of Leg. Burgund. c. 78. which seemed to limit the succession of estates, called *sortes*, to male heirs. But the expressions are too obscure to warrant this inference; and M. Guizot (Essais sur l'Histoire de France, vol. 1. p. 95.) refers to the 14th chapter of the same code for the opposite proposition. But this too is not absolutely clear, as a general rule.

(3) Daniel conjectures that Clotaire I. was the first who admitted Romans into the army, which had previously been composed of Franks. From this time we find many in high military command. (Hist. de la Milice Françoise, t. p. 11.) It seems by a passage in Gregory of Tours, by Du Bos, (t. iii. p. 347.) that some Romans affected the Agrarian character, by letting their hair grow. If this were generally permitted, it would be a stronger evidence of approximation between the two races, than any that Du Bos has adduced. Montesquieu certainly takes it for granted that a Roman might change his law, and thus become to all material intents a Frank. (Esprit des lois, l. xxviii. c. 4.) But the passage on which he relies is read differently in the manuscripts.

(4) Some bishops, if we may judge from their barbarous names, and other circumstances, were not Romans. See, for instance, Gregory of Tours, l. 6 c. 9. But no distinction was made among them on this account. The composition for the murder of a bishop was nine hundred solidi; for that of a priest, six hundred of the same coin. Leges Salicæ, c. 57.

at three hundred for a Roman *conviva regis* (meaning a man of sufficient rank to be admitted to the royal table); at two hundred for a common Frank; at one hundred for a Roman possessor of lands; and at forty-five for a tributary, or cultivator of another's property. In Burgundy where religion and length of settlement had introduced different ideas, murder was punished with death. But other personal injuries were compensated, as among the Franks, by a fine graduated according to the rank and nation of the aggrieved party (1).

Distinction of laws.

The barbarous conquerors of Gaul and Italy were guided by notions very different from those of Rome, who had imposed her own laws upon all the subjects of her empire. Adhering in general to their ancient customs without desire of improvement, they left the former inhabitants in unmolested enjoyment of their civil institutions. The Frank was judged by the Salic or the Ripuary code; the Gaul followed that of Theodosius (2). This grand distinction of Roman and barbarian, according to the law which each followed, was common to the Frank, Burgundian, and Lombard kingdoms. But the Ostrogoths, whose settlement in the empire and advance in civility of manners were earlier, inclined to desert their old usages, and adopt the Roman jurisprudence (3). The laws of the Visigoths too were compiled by bishops upon a Roman foundation, and designed as an uniform code, by which both nations should be governed (4). The name of Gaul or Roman was not entirely lost in that of Frenchman, nor had the separation of their laws ceased, even in the provinces north of the Loire, till after the time of Charlemagne (5). Ultimately, however, the feudal customs of succession, which depended upon principles quite remote from those of the civil law, and the rights of territorial justice which the barons came to possess, contributed to extirpate the Roman jurisprudence in that part of France. But in the south, from whatever cause, it survived the revolutions of the middle ages; and thus arose a leading division of that kingdom, into *pays coutumiers* and *pays du droit écrit*; the former regulated by a vast variety of ancient usages, the latter by the civil law (6).

(1) Leges Salicæ, c. 43. Leges Burgundionum, tit. 2. Murder and robbery were made capital by Childebert, king of Paris; but *Francus* was to be sent for trial in the royal court, *debilior persona in loco pendatur*. Baluz. t. i. p. 17. I am inclined to think, that the word *Francus* does not absolutely refer to the nation of the party; but rather to his rank, as opposed to *debilior persona*; and, consequently, that it had already acquired the sense of *freeman*, or *free-born* (ingenuus), which is perhaps its strict meaning. Du Cange, voc. Francus, quotes the passage in this sense.

(2) Inter Romanos negotia causarum Romanis legibus præcipimus terminari. Edict. Clotair. I. circ. 560. Baluz. Capitul. t. i. p. 7.

(3) Giannone, l. iii. c. 2.

(4) Hist. de Languedoc, t. i. p. 242. Heineccius, Hist. Juris German. c. i. s. 15.

(5) Suger, in his life of Louis VI., uses the expression, lex Salica, (Recueil des Historiens, t. xii. p. 25.;) and I have some recollection of having met with the like words in other writings of as modern a date. But I am not convinced that the original Salic code was meant by this phrase, which may have been applied to the local feudal customs. The capitularies of Charlemagne are frequently termed lex Salica. Many of these are copied from the Theodosian code.

(6) This division is very ancient, being found in the edict of Pistes, under Charles the Bald, in 864; where we read, in illis regionibus, quæ legem Romanam sequuntur. (Recueil des Historiens, t. vii. p. 664.) Montesquieu thinks, that the Roman law fell into disuse in the north of France on account of the superior advantages, particularly in point of composition for offences, annexed to the Salic law;

Provincial government of the French empire.

The kingdom of Clovis was divided into a number of districts each under the government of a count, a name familiar to Roman subjects, by which they rendered the *graf* of the Germans. The authority of this officer extended over all the inhabitants, as well Franks as natives. It was his duty to administer justice, to preserve tranquillity, to collect the royal revenues, and to lead, when required, the free proprietors into the field (1). The title of a duke implied a higher dignity, and commonly gave authority over several counties (2). These offices were originally conferred during pleasure; but the claim of a son to succeed his father would often be found too plausible or too formidable to be rejected, and it is highly probable that, even under the Merovingian kings, these provincial governors had laid the foundations of that independence which was destined to change the countenance of Europe (3). The Lombard dukes, those especially of Spoleto

while that of the Visigoths being more equal, the Romans under their government had no inducement to quit their own code. (Esprit des Lois, l. xxviii. c. 4.) But it does not appear that the Visigoths had any peculiar code of laws till after their expulsion from the kingdom of Toulouse. They then retained only a small strip of territory in France, about Narbonne and Montpellier.

However, the distinction of men according to their laws was preserved for many centuries, both in France and Italy. A judicial proceeding of the year 918, published by the historians of Languedoc, (t. ii. Appendix, p. 56.) proves that the Roman, Gothic, and Salic codes were then kept perfectly separate, and that there were distinct judges for the three nations. The Gothic law is referred to as an existing authority in a charter of 1070. Idem, t. iii. p. 274. De Marca, Marca Hispanica, p. 1159. Every man, both in France (Hist. de Languedoc, t. ii. Append. p. 69.) and in Italy, seems to have had the right of choosing by what law he would be governed. Volumus, says Lothaire I. in 824, ut cunctus populus Romanus interrogetur, quali lege vult vivere, ut tali, quali professi fuerint vivere velle, vivant. Quod si offensionem contra eamdem legem fecerint, eidem legi quam profitentur subjacebunt. Women upon marriage usually changed their law, and adopted that of their husband, returning to their own in widowhood; but to this there are exceptions. Charters are found, as late as the twelfth century, with the expression, qui professus sum lege Longobardicâ [aut] lege Salicâ [aut] lege Alemannorum vivere. But soon afterwards the distinctions were entirely lost, partly through the prevalence of the Roman law, and partly through the multitude of local statutes in the Italian cities. Muratori, Antiquitates Italiæ, Dissertat. 22. Du Cange, v. Lex. Heineccius, Historia Juris Germanici, c. ii. s. 51.

(1) Marculfi Formulæ, l. i. 32.

(2) Houard, the learned translator of Littleton, (Anciennes Lois des François, t. i. p. 6.) supposes these titles to have been applied indifferently. But the contrary is easily proved, and especially by a line of Fortunatus, quoted by Du Cange and others:

Qui modo dat Comitis, det tibi jura Ducis.

The cause of M. Houard's error may perhaps be worth noticing. In the above cited form of Marculfus, a *precedent* (in law language) is given for the appointment of a duke, count, or patrician. The material part being the same, it was only necessary to *fill up the blanks*, as we should call it, by inserting the proper designation of office. It is expressed therefore: actionem *comitatus, ducatus aut patriciatus* in *pago illo*, quam *antecessor tuus ille* usque nunc visus est egisse, tibi agendam regendamque commisimus. Montesquieu has fallen into a similar mistake, (l. xxx. c. 16.) forgetting for a moment, like Houard, that these instruments in Marculfus were not records of real transactions, but general forms for future occasion.

The office of patrician is rather more obscure. It seems to have nearly corresponded with what was afterwards called mayor of the palace, and to have implied the command of all the royal forces. Such at least were Celsus, and his successor Mummolus under Gontran. This is probable too from analogy. The patrician was the highest officer in the Roman empire, from the time of Constantine, and we know how much the Franks themselves, and still more their Gaulish subjects, affected to imitate the style of the imperial court.

(3) That the offices of count and duke were originally but temporary, may be inferred from several passages in Gregory of Tours; as l. v. c. 27. l. viii. c. 18. But it seems by the laws of the Alemanni, c. 35. that the hereditary succession of their dukes was tolerably established at the beginning of the seventh century, when their code was promulgated. The Bavarians chose their own dukes out of one family, as is declared in their laws; tit. ii. c. 1. and c. 20. (Lindebrog, Codex Legum antiquarum.) This the emperor Henry II. confirms in Ditmar; Nonne scitis (he says), Bajuarios ab initio ducem eligendi liberam habere potestatem? (Schmidt, Hist. des Allemands, t. ii. p. 404.) Indeed the consent of these German provincial nations, if I may use the expression, seems to have been always required, as in an independent monarchy. Ditmar, a chronicler of the tenth century, says, that Eckard was make duke of Thuringia totius populi consensu. Pieffel, Abrégé Chronologique, t. i. p. 184. With respect to France properly so called, or the kingdoms of Neustria and Burgundy, it may be less easy to prove the existence of hereditary offices under the Merovingians. But the feebleness of their government makes it probable, that so natural a symptom of disorganization had not failed to ensue. The Helvetian counts appear to have been nearly independent, as early as this period. (Planta's Hist. of the Helvetic Confederacy, chap. 1.

and Benevento, acquired very early an hereditary right of governing their provinces, and that kingdom became a sort of federal aristocracy (1).

Succession to the French monarchy.

The throne of France was always filled by the royal house of Merovens. However complete we may imagine the elective rights of the Franks, it is clear that a fundamental law restrained them to this family. Such indeed had been the monarchy of their ancestors the Germans; such long continued to be those of Spain, of England, and perhaps of all European nations. The reigning family was immutable; but at every vacancy the heir awaited the confirmation of a popular election, whether that were a substantial privilege, or a mere ceremony. Exceptions, however, to the lineal succession are rare in the history of any country, unless where an infant heir was thought unfit to rule a nation of freemen. But in fact it is vain to expect a system of constitutional laws rigidly observed in ages of anarchy and ignorance. Those antiquaries who have maintained the most opposite theories upon such points are seldom in want of particular instances to support their respective conclusions (2).

Limited authority of Clovis.

Clovis was a leader of barbarians, who respected his valour, and the rank which they had given him, but were incapable of servile feelings, and jealous of their common as well as individual rights. In order to appreciate the power which he possessed, we have only to look at the well known story of the vase of Soissons. When the plunder taken in Clovis's invasion of Gaul was set out in this place for distribution, he begged for himself a precious vessel, belonging to the church of Rheims. The army having expressed their willingness to consent: "You shall have nothing here," exclaimed a soldier, striking it with his battle-axe, "but what falls to your share by lot." Clovis took the vessel, without marking any resentment; but found an opportunity, next year, of revenging himself by the death of the soldier. It is impossible to resist the inference which is supplied by this story. The whole behaviour of Clovis is that of a barbarian chief, not daring to withdraw any thing from the rapacity, or to chastise the rudeness of his followers.

Vase of Soissons.

Power of the kings increases.

But if such was the liberty of the Franks, when they first became conquerors of Gaul, we have good reason to believe, that they did not long preserve it. A people not very numerous spread over the spacious provinces of Gaul, wherever lands were assigned to, or seized by them (3). It became a burden

(1) Giannone, l. iv.

(2) Hottoman (Franco-Gallia, c. vi.) and Boulainvilliers (État de la France) seem to consider the crown as absolutely elective. The Abbé Vertot (Mémoires de l'Acad. des Inscriptions, t. iv.) maintains a limited right of election within the reigning family. M. de Foucemague (t. vi and t. viii. of the same collection asserts a strict hereditary descent. Neither perhaps sufficiently distinguishes acts of violence from those of right, nor observes the changes in the French constitution between Clovis and Childeric III.

(3) Du Bos, Hist. Critique, t. ii. p. 301. maintains that Clovis had not more than 3,000 or 4,000 Franks in his army, for which he produces some, though not very ancient, authorities. The small-

to attend those general assemblies of the nation, which were annually convened in the month of March, to deliberate upon public business, as well as to exhibit a muster of military strength. After some time, it appears that these meetings drew together only the bishops, and those invested with civil offices (1). The ancient inhabitants of Gaul, having little notion of political liberty were unlikely to resist the most tyrannical conduct. Many of them became officers of state, and advisers of the sovereign, whose ingenuity might teach maxims of despotism unknown in the forests of Germany. We shall scarcely wrong the bishops by suspecting them of more pliable courtliness than was natural to the long-haired warriors of Clovis (2). Yet it is probable, that some of the Franks were themselves instrumental in this change of their government. The court of the Merovingian kings was crowded with followers, who have been plausibly derived from those of the German chiefs described by Tacitus; men, forming a distinct and elevated class in the state, and known by the titles of Fideles, Leudes, and Antrustiones. They took an oath of fidelity to the king, upon their admission into that rank, and were commonly remunerated with gifts of land. Under different appellations we find, as some antiquaries think, this class of courtiers in the early records of Lombardy and England. The general name of Vassals (from *Gwas*, a Celtic word for a servant) is applied to them in every country (3). By the assistance of these faithful supporters, it has been thought, that the regal authority of Clovis's successors was insured (4). However this may be, the annals of his more immediate descendants exhibit a course of oppression, not merely displayed, as will often happen among uncivilized people, though free, in acts of private injustice, but in such general tyranny as is incompatible with the existence of any real checks upon the sovereign (5).

ness of the number of Salians may account for our finding no mention of the partitions made in their favour. See, however, Du Bos, t. iii. p. 466.

(1) Du Bos, t. iii. p. 327. Mably, Observations sur l'Histoire de France, l. i. c. 3.

(2) Gregory of Tours, throughout his history, talks of the royal power in the tone of Louis XIV.'s court. If we were obliged to believe all we read, even the vase of Soissons would bear witness to the obedience of the Franks.

(3) The Gasindi of Italy, and the Anglo-Saxon royal Thane appear to correspond, more or less, to the Antrustions of France. The word Thane, however, was used in a very extensive sense, and comprehended all free proprietors of land. That of *Leudes* seems to imply only subjection, and is frequently applied to the whole body of a nation, as well as, in a stricter sense, to the king's personal vassals. This name they did not acquire, originally, by possessing benefices; but rather, by being vassals, or servants, became the object of beneficiary donations. In one of Marculfus's precedents, l. i. f. 18. we have the form by which an Antrustion was created. See Du Cange, under these several words and Muratori's thirteenth dissertation on Italian Antiquities. The Gardingi sometimes mentioned in the laws of the Visigoths do not appear to be of the same description.

(4) Boantus **** vallatus in domo suâ, ab hominibus regis interfectus est. Greg. Tur. l. viii. c. 11. A few spirited retainers were sufficient to execute the mandates of arbitrary power among a barbarous, disunited people.

(5) The proofs of this may be found in almost every page of Gregory: among other places, see l. iv. c. 1.; l. vi. c. 29.; l. ix. c. 20. In all edicts proceeding from the first kings, they are careful to express the consent of their subjects. Clovis's language runs—Populus noster petit. His son Childebert expresses himself: unà cum nostris optimatibus pertractavimus—convenit unà cum leudis nostris. But in the famous treaty of Andely, A.D. 587, no national assent seems to have been asked or given to its provisions, which were very important. And an edict of one of the Clotaires (it is uncertain whether the first or second of that name, though Montesquieu has given good reasons for the latter) assumes a more magisterial tone, without any mention of the Leudes.

Degeneracy of the royal family. Mayors of the palace.

But before the middle of the seventh century the kings of this line had fallen into that contemptible state, which has been described in the last chapter. The mayors of the palace, who, from mere officers of the court, had now become masters of the kingdom, were elected by the Franks, not indeed the whole body of that nation, but the provincial governors, and considerable proprietors of land (1). Some inequality there probably existed from the beginning in the partition of estates, and this had been greatly increased by the common changes of property, by the rapine of those savage times, and by royal munificence. Thus arose that landed aristocracy, which became the most striking feature in the political system of Europe during many centuries, and is in fact its great distinction, both from the despotism of Asia, and the equality of republican governments.

Nobility.

There has been some dispute about the origin of nobility in France, which might perhaps be settled, or at least better understood, by fixing our conception of the term. In our modern acceptation, it is usually taken to imply certain distinctive privileges in the political order, inherent in the blood of the possessor, and consequently not transferable like those which property confers. Limited to this sense, nobility, I conceive, was unknown to the conquerors of Gaul till long after the downfall of the Roman empire. They felt, no doubt, the common prejudice of mankind in favour of those whose ancestry is conspicuous, when compared with persons of obscure birth. This is the primary meaning of nobility, and perfectly distinguishable from the possession of exclusive civil rights. Those who are acquainted with the constitution of the Roman republic, will recollect an instance of the difference between these two species of hereditary distinction, in the *patricii* and the *nobiles*. Though I do not think that the tribes of German origin paid so much regard to genealogy as some Scandinavian and Celtic nations, (else the beginnings of the greatest houses would not have been so enveloped in doubt as we find them), there are abundant traces of the respect in which families of known antiquity were held among them (2).

(1) The revolution which ruined Brunehaut was brought about by the defection of her chief nobles, especially Warnachar, mayor of Austrasia. Upon Clotaire II.'s victory over her, he was compelled to reward these adherents at the expense of the monarchy. Warnachar was made mayor of Burgundy, with an oath from the king never to dispossess him. (Fredegarius, c. 42.) In 626, the nobility of Burgundy declined to elect a mayor, which seems to have been considered as their right. From this time, nothing was done without the consent of the aristocracy. Unless we ascribe all to the different ways of thinking in Gregory and Fredegarius, the one a Roman bishop, the other a Frank, or Burgundian, the government was altogether changed.

It might even be surmised, that the crown was considered as more elective than before. The author of Gesta Regum Francorum, an old chronicler who lived in those times, changes his form of expressing a king's accession from that of Clotaire II. Of the earlier kings he says only, regnum recepit. But of Clotaire, Franci quoque prædictum Clotarium regem parvulum supra se in regnum statuerunt. Again, of the accession of Dagobert I. : Austrasii Franci superiores congregati in unum, Dagobertum supra se in regnum statuunt. In another place, Decedente præfato rege Clodoveo, Franci Clotarium senioremm puerum ex tribus sibi regem statuerunt. Several other instances might be quoted.

(2) The antiquity of French nobility is maintained temperately by Schmidt, Hist. des Allemands, t. i. p. 361., and with acrimony by Montesquieu, Esprit des Lois, l. xxx. c. 25. Neither of them proves any more than I have admitted. The expression of

But the essential distinction of ranks in France, perhaps, also in Spain and Lombardy, was founded upon the possession of land, or upon civil employment. The aristocracy of wealth preceded that of birth, which indeed is still chiefly dependent upon the other for its importance. A Frank of large estate was styled a noble; if he wasted or was despoiled of his wealth, his descendants fell into the mass of the people, and the new possessor became noble in his stead. In these early ages, property did not very frequently change hands, and desert the families who had long possessed it. They were noble by descent, therefore, because they were rich by the same means. Wealth gave them power, and power gave them pre-eminence. But no distinction was made by the Salic or Lombard codes in the com position for homicide, the great test of political station, except in favour of the king's vassals. It seems, however, by some of the barbaric codes, those namely of the Burgundians, Visigoths, Saxons, and the English colony of the latter nation (1), that the free men were ranged by them into two or three classes, and a difference made in the price at which their lives were valued: so that there certainly existed the elements of aristocratic privileges, if we cannot in strictness admit their completion at so early period. The Antrustiones of the kings of the Franks were also noble, and a composition was paid for their murder, treble of that for an ordinary citizen: but this was a personal, not an hereditary distinction. A link was wanting to connect their eminent privileges with their posterity; and this link was to be supplied by hereditary benefices.

Fiscal lands.

Besides the lands distributed among the nation, others were reserved to the crown, partly for the support of its dignity, and partly for the exercise of its munificence. These were called fiscal lands; they were dispersed over different parts of the kingdom, and formed the most regular source of revenue (2). But the greater portion of them were granted out to favoured subjects, under the name of benefices, the nature of which is one of the most important points in the policy of these ages. Benefices were, it is probable, most frequently bestowed upon the professed courtiers, the Antrustiones or Leudes, and upon the provincial governors. It by no means appears, that any conditions of military service were expressly annexed to these grants: but it

Benefices.

Ludovicus Pius to his freedman: Rex fecit te liberum, non nobilem: quod impossibile est post libertatem, is very intelligible, without imagining a privileged class. Of the practical regard paid to birth, indeed, there are many proofs. It seems to have been a recommendation in the choice of bishops. (Marculfi Formulæ, l. i. c. 4. cum notis Bignonii, in Baluzii Capitularibus.) It was probably much considered in conferring dignities. Fredegarius says of Protadius, mayor of the palace to Brunehaut, Quoscunque genere nobiles reperiebat, totos humiliare conabatur, ut nullus reperiretur qui gradum quem arripuerat potuisset assumere.

(1) Leg. Burgund. tit. 24. Leg. Visigoth. l. ii. t. 2. c. 4. (in Lindebrog.) Du Cange, voc. Adalingus, Nobilis. Wilkins, Leg. Ang. Sax. passim. I think it cannot be denied, that nobility, founded either upon birth or property, and distinguished from mere personal freedom, entered into the Anglo-Saxon system. Thus the *eorl* and *ceorl* are opposed to each other, like the noble and roturier in France.

(2) The demesne lands of the crown are continually mentioned in the early writers; the kings, in journeying to different parts of their dominions, took up their abode in them. Charlemagne is very full in his directions as to their management. Capitularia, A. D. 797. et alibi.

may justly be presumed that such favours were not conferred without an expectation of some return; and we read both in law and history, that beneficiary tenants were more closely connected with the crown than mere alodial proprietors. Whoever possessed a benefice was bound to serve his sovereign in the field. But of alodial proprietors only the owner of three mansi was called upon for personal service. Where there were three possessors of single mansi, one went to the army, and the others contributed to his equipment (1). Such at least were the regulations of Charlemagne, whom I cannot believe, with Mably, to have relaxed the obligations of military attendance. After the peace of Coblentz, in 860, Charles the Bald restored all alodial property belonging to his subjects who had taken part against him, but not his own beneficiary grants, which they were considered as having forfeited.

Their extent.

Most of those who have written upon the feudal system, lay it down that benefices were originally precarious, and revoked at pleasure by the sovereign; that they were afterwards granted for life; and at a subsequent period became hereditary. No satisfactory proof, however, appears to have been brought of the first stage in this progress (2). At least, I am not

(1) Capitul. Car. Mag. ann. 807. and 812. I cannot define the precise area of a mansus. It consisted, according to Du Cange, of twelve jugera; but what he meant by a juger I know not. The ancient Roman juger was about five-eighths of an acre; the Parisian arpent was a fourth more than one. This would make a difference as two to one.

(2) The position which I have taken upon me to controvert, is laid down in almost every writer on the feudal system. Besides Sir James Craig, Spelman, and other older authors, Houard, in his Anciennes Lois des François, t. i. p. 5., and the editors of the Benedictine collection, t. xi. p. 163., take the same point for granted. Mably, Observations sur l'Histoire de France, l. i. c. 3., calls it, une vérité que M. de Montesquieu a très-bien prouvée. And Robertson affirms with unusual positiveness: "These benefices were granted originally only during pleasure. No circumstance relating to the customs of the middle ages is better ascertained than this; and innumerable proofs of it might be added to those produced in l'Esprit des Lois, and by Du Cange." Hist. of Charles V. vol. i. not. 8.

These testimonies, which Robertson has not chosen to bring forward, we cannot conjecture; nor is it easy to comprehend by what felicity he has discovered, in the penury of historical records during the sixth and seventh centuries, innumerable proofs of an usage which, by the confession of all, did not exist at any later period. But as the authorities quoted by Montesquieu have appeared conclusive both to Mably and Robertson, it may be proper to examine them separately. The following is the passage in the l'Esprit des Lois, on which they rely.

On ne peut pas douter que d'abord les fiefs ne fussent amovibles. On voit, dans Grégoire de Tours, que l'on ôte à Sunégisille et à Galloman tout ce qu'ils tenoient du fisc, et qu'on ne leur laisse que ce qu'ils avoient en propriété. Gontran, élevant au trône son neveu Childebert, eut une conférence secrète avec lui, et lui indiqua ceux à qui il devoit donner des fiefs, et ceux à qui il devoit les ôter. Dans une formule de Marculfe le roi donne, en échange, non seulement des bénéfices que son fisc tenoit, mais encore ceux qu'un autre avoit tenus. La loi des Lombards oppose les bénéfices à la propriété. Les historiens, les formules, les codes des différens peuples barbares, tous les monumens qui nous restent sont unanimes. Enfin, ceux qui ont écrit le Livre des Fiefs nous apprennent que d'abord les seigneurs purent les ôter à leur volonté, qu'ensuite ils les assurèrent pour un an, et après les donnèrent pour toujours. l. xxx. c. 16.

The first of Montesquieu's authorities is from Gregory of Tours, l. ix. c. 38. Sunegisilus and Gallomagnus, two courtiers of Childebert, having been accused of a treasonable conspiracy, fled to sanctuary, and refused to stand their trial. Their beneficiary lands were upon this very justly taken away by a judicial sentence. What argument can be drawn from a case of forfeiture for treason or outlawry, that benefices were granted only during pleasure? 2. Gontran is said by Gregory to have advised his nephew Childebert, quos honoraret muneribus, quos ab honore depelleret. l. vii. 33. But *honor* is more commonly used in the earliest writers for an office of dignity, than for a landed estate; and even were the word to bear in this place the latter meaning, we could not fairly depend on an authority, drawn from times of peculiar tyranny and civil convulsion. I am not contending that men were secure in their beneficiary, since they certainly were not so in their alodial estates: the sole question is, as to the right they were supposed to possess in respect of them. 3. In the precedent of Marculfus, quoted by Montesquieu, the king is supposed to grant lands which some other person had lately held. But this is meant as a designation of the premises, and would be perfectly applicable, though the late possessor were dead. 4. It is certainly true, that the Lombard laws, (that is, laws enacted by the successors of Charlemagne in Lombardy,) and the general tenor of ancient records, with a few exceptions, oppose be-

convinced, that beneficiary grants were ever considered as resumable at pleasure, unless where some delinquency could be imputed to the vassal. It is possible, though I am not aware of any documents which prove it, that benefices may, in some instances, have been granted for a term of years, since even fiefs, in much later times, were occasionally of no greater extent. Their ordinary duration, however, was at least the life of the possessor, after which they reverted to the fisc (1). Nor can I agree with those, who deny the existence of hereditary benefices under the first race of French kings. The codes of the Burgundians, and of the Visigoths, which advert to them, are, by analogy, witnesses to the contrary (2). The precedents given in the forms of Marculfus (about 660) for the grant of a benefice, contain very full terms, extending it to the heirs of the beneficiary (3). And Mably has plausibly inferred the perpetuity of benefices, at least in some instances, from the language of the treaty at Andely in 587, and of an edict of Clotaire II. some years later (4). We can hardly doubt at least that children would put in a very strong claim to what their father had enjoyed; and the weakness of the crown in the seventh century must have rendered it difficult to reclaim its property.

nefices to propriety: but it does not follow that the former were revocable at pleasure. This opposition of alodial to feudal estates subsists at present, though the tenure of the latter is any thing rather than precarious. 5. As to the Libri Feudorum, which are a compilation by some Milanese lawyers in the twelfth century, they cannot be deemed of much authority for the earlier history of the feudal system in France. There is certainly reason to think, that even in the eleventh century, the tenure of fiefs in some parts of Lombardy was rather precarious; but whether this were by any other law than that of the stronger, it would be hard to determine.

Du Cange, to whom Robertson also refers, gives this definition of a benefice: prædium fiscale, quod a rege vel principe, vel ab alio quolibet *ad vitam* viro nobili utendum conceditur. In a subsequent place, indeed, he says: nec tantum erant ad vitam, sed pro libitu auferebantur. For this he only cites a letter of the bishops to Louis the Debonair: Ecclesiæ nobis à Deo commissæ non talia sunt beneficia, et hujusmodi regis proprietas, ut pro libitu suo inconsultè illas possit dare, aut auferre. But how slight a foundation does this afford for the inference, that lay benefices were actually liable to be resumed at pleasure! Suppose even this to be a necessary implication in the argument of those bishops, is it certain that they stated the law of their country with accuracy? Do we not find greater errors than this every day in men's speech and writings, relative to points with which they are not immediately concerned? In fact, there is no manner of doubt, that benefices were granted not only for life, but as inheritances, in the reign of Louis. In the next sentence Du Cange adds a qualification, which puts an end to the controversy, so far as his authority is concerned: Non temerè tamen, *nec sine legali judicio*, auferebantur. That those two sentences contradict each other is manifest; the latter, in my opinion, is the more correct position.

(1) The following passage from Gregory of Tours seems to prove, that although sons were occasionally permitted to succeed their fathers, an indulgence which easily grew up into a right, the crown had, in his time, an unquestionable reversion after the death of its original beneficiary. Hoc tempore et Wandelinus, nutritor Childeberti regis, obiit; sed in locum ejus nullus est subrogatus, eo quod regina mater curam velit propriam habere de filio. *Quæcumque de fisco meruit, fisci juribus sunt relata.* Obiit his diebus Bodegesilus dux plenus dierum; sed nihil de facultate ejus filiis minutum est. l. viii. c. 22. Gregory's work, however, does not go farther than 595.

(2) Leges Burgundionum, tit. i. Leges Wisigoth. l. v. tit. 2.

(3) Marculf. form. xii. and xiv. l. i. This precedent was in use down to the eleventh century; its expressions recur in almost every charter. The earliest instance I have seen of an actual grant to a private person, is of Charlemagne to one John, in 795. Baluzii Capitularia, t. ii. p. 1400.

(4) Quidquid antefati reges ecclesiis aut fidelibus suis contulerunt, aut adhuc conferre cum justitiâ Deo propitiante voluerint, stabiliter conservetur; et quidquid unicuique fidelium in utriusque regno per legem et justitiam redhibetur, nullum ei præjudicium ponatur, sed liceat res debitas possidere atque recipere. Et si aliquid unicuique per interregna sine culpâ sublatum est, audientiâ habitâ restauretur. Et de eo quod per munificentias præcedentium regum unusquisque usque ad transitum gloriosæ memoriæ domini Chlotacharii regis possedit, cum securitate possideat; et quod exinde fidelibus personis ablatum est, de præsenti recipiat. Fœdus Andeliacum, in Gregor. Turon. l. ix. c. 20.

Quæcumque ecclesiæ vel clericis vel quibuslibet personis a gloriosæ memoriæ præfatis principibus munificentiæ largitate collatæ sunt, omni firmitate perdurent. Edict. Chlotachar. I. vel potius II. Recueil des Historiens, t. iv. p. 116

Sub-infeudation.

A natural consequence of hereditary benefices was that those who possessed them carved out portions to be held of themselves by a similar tenure. Abundant proofs of this custom, best known by the name of sub-infeudation, occur even in the capitularies of Pepin and Charlemagne. At a later period it became universal; and what had begun perhaps through ambition or pride was at last dictated by necessity. In that dissolution of all law which ensued after the death of Charlemagne, the powerful leaders, constantly engaged in domestic warfare, placed their chief dependence upon men whom they attached by gratitude, and bound by strong conditions. The oath of fidelity which they had taken, the homage which they had paid to the sovereign, they exacted from their own vassals. To render military service became the essential obligation which the tenant of a benefice undertook; and out of those ancient grants, now become for the most part hereditary, there grew up in the tenth century, both in name and reality, the system of feudal tenures (1).

Usurpation of provincial governors.

This revolution was accompanied by another still more important. The provincial governors, the dukes and counts, to whom we may add the marquisses or margraves, intrusted with the custody of the frontiers, had taken the lead in all public measures after the decline of the Merovingian kings. Charlemagne, duly jealous of their ascendancy, checked it by suffering the duchies to expire without renewal, by granting very few counties hereditarily, by removing the administration of justice from the hands of the counts into those of his own itinerant judges, and, if we are not deceived in his policy, by elevating the ecclesiastical order as a counterpoise to that of the nobility. Even in his time, the faults of the counts are the constant theme of the capitularies; their dissipation and neglect of duty, their oppression of the poorer proprietors, and their artful attempts to appropriate the crown lands situated within their territory (2). If Charlemagne was unable to redress those evils, how much must they have increased under his posterity! That great prince seldom gave more than one county to the same person; and as they were generally of moderate size, co-extensive with episcopal dioceses, there was less danger, if this policy had been followed, of their becoming independent (3). But Louis the Debonair, and, in a still greater degree, Charles the Bald, allowed several counties to be enjoyed by the same person. The possessors constantly aimed at acquiring private

(1) Somner says, that he has not found the word feudum anterior to the year 1000; and Muratori, a still greater authority, doubts whether it was used so early. I have, however, observed the words feum and fevum, which are manifestly corruptions of feudum, in several charters about 960. Vaissette, Hist. de Languedoc, t. ii. Appendix, p. 107. 128. et alibi. Some of these fiefs appear not to have been hereditary. But, independently of positive instances, can it be doubted that some word of barbarous original must have answered, in the vernacular languages, to the Latin beneficium? See du Cange, v. Feudum.

(2) Capitularia Car. Mag. et Lud. Pii. passim. Schmidt, Hist. des Allemands, t. ii. p. 156. Gaillard, Vie de Charlemag. t. iii. p. 118.

(3) Vaissette, Hist. de Languedoc, t. i. p. 587. 700. and not. 87.

estates within the limits of their charge, and thus both rendered themselves formidable, and assumed a kind of patrimonial right to their dignities. By a capitulary of Charles the Bald, A.D. 877, the succession of a son to the father's county appears to be recognised as a known usage (1). In the next century there followed an entire prostration of the royal authority, and the counts usurped their governments as little sovereignties, with the domains and all regalian rights, subject only to the feudal superiority of the king (2). They now added the name of the county to their own, and their wives took the appellation of countess (3). In Italy, the independence of the dukes was still more complete; and although Otho the Great and his descendants kept a stricter rein over those of Germany, yet we find the great fiefs of their empire, throughout the tenth century, granted almost invariably to the male and even female heirs of the last possessor.

Change of alodial into feudal tenures.

Meanwhile, the alodial proprietors, who had hitherto formed the strength of the state, fell into a much worse condition. They were exposed to the rapacity of the counts, who, whether as magistrates and governors, or as overbearing lords, had it always in their power to harass them. Every district was exposed to continual hostilities; sometimes from a foreign enemy, more often from the owners of castels and fastnesses, which in the tenth century, under pretence of resisting the Normans and Hungarians, served the purposes of private war. Against such a system of rapine, the military compact of lord and vassal was the only effectual shield; its essence was the reciprocity of service and protection. But an insulated alodialist had no support: his fortunes were strangely changed, since he claimed, at least in right, a share in the legislation of his country, and could compare with pride his patrimonial fields with the temporary benefices of the crown. Without law to redress his injuries, without the royal power to support his right, he had no course left, but to compromise with oppression, and subject himself, in return for protection, to a feudal lord. During the tenth and eleventh centuries it appears that alodial lands in France had chiefly become feudal: that is, they had been surrendered by their proprietors, and received back again upon the feudal conditions; or more frequently, perhaps, the owner had been compelled to acknowledge himself the *man* or vassal of a suzerain, and thus to confess an original grant which had never existed (4). Changes of the same nature, though not perhaps so

(1) Baluzii Capitularia, t. ii. p. 263. and 269. This is a questionable point, and most French antiquaries consider this famous capitulary as the foundation of an hereditary right in counties. I am inclined to think, that there was at least a practice of succession, which is implied and guaranteed by this provision.

(2) It appears, by the record of a process in 918, that the counts of Toulouse had already so far usurped the rights of their sovereign, as to claim an estate, on the ground of its being a royal benefice. Hist. de Languedoc, t. ii. Appen. p. 56.

(3) Vaissette, Hist. de Languedoc, t. i. p. 583., and infrà, t. ii. p. 38. 109., and Appendix, p. 56.

(4) Hist. de Languedoc, t. ii. p. 169. It must be confessed that there do not occur so many specific instances of this conversion of alodial tenure into feudal, as might be expected, in order to warrant

extensive, or so distinctly to be traced, took place in Italy and Germany. Yet it would be inaccurate to assert, that the prevalence of the feudal system has been unlimited; in a great part of France, alodial tenures always subsisted; and many estates in the empire were of the same description (1).

Custom of personal commendation.

There are, however, vestiges of a very universal custom distinguishable from the feudal tenure of land, though so analogous to it, that it seems to have nearly escaped the notice of antiquaries. From this silence of other writers, and the great obscurity of the subject, I am almost afraid to notice, what several passages in ancient laws and instruments concur to prove, that, besides the relation established between lord and vassal by beneficiary grants, there was another species more personal, and more closely resembling that of patron and client in the Roman republic. This was usually called *commendation*; and appears to have been founded on two very general principles, both of which the distracted state of society inculcated. The weak needed the protection of the powerful; and the government needed some security for public order. Even before the invasion of the Franks, Salvian, a writer of the fifth century, mentions the custom of obtaining the protection of the great by money, and blames their rapacity, though he allows the natural reasonableness of the practice (2). The disadvantageous condition of the less powerful freemen, which ended in the servitude of one part, and in the feudal vassalage of another, led such, as fortunately still preserved their alodial property, to insure its defence by a stipulated payment of money. Such payments, called Salvamenta, may be traced in extant charters, chiefly indeed of monasteries (3). In the case of private persons, it may be presumed that this voluntary contract was frequently changed by the stronger party into a perfect feudal dependence. From this, however, as I imagine, it properly differed in being capable of dissolution at the inferior's pleasure without incurring a forfeiture, as well as in having no relation to land. Homage, however, seems to have been incident to commendation,

the supposition in the text. Several records however are quoted by Robertson, Hist. Charles V., note 8.; and others may be found in diplomatic collections. A precedent for surrendering alodial property to the king, and receiving it back as his benefice, appears even in Marculfus, l. i. form. 13. The county of Cominges, between the Pyrenees, Toulouse, and Bigorre, was alodial till 1244, when it was put under the feudal protection of the count of Toulouse. It devolved by escheat to the crown in 1443. Villaret, t. xv. p. 346.

In many early charters, the king confirms the possession even of alodial property, for greater security in lawless times; and, on the other hand, in those of the tenth and eleventh centuries, the word alodium is continually used for a feud, or hereditary benefice, which renders this subject still more obscure.

(1) The maxim, Nulle terre sans seigneur, was so far from being universally received in France, that in almost all southern provinces or pays du droit écrit, land were presumed to be alodial, unless the contrary was shewn, or, as it was called, franc-aleux sans titre. The parliaments, however, seem latterly to have inclined against this presumption, and have thrown the burthen of proof on the party claiming alodiality. For this see Denisart, Dictionnaire des Décisions, art. Franc-aleu. And the famous maxim of the Chancellor Duprat, nulle terre sans seigneur, was true, as I learn from the dictionary of Houard, with respect to jurisdiction, though false as to tenure; alodial lands insulated (enclavées) within the fief of a lord, being subject to his territorial justice. Diction. de Houard, art. Aleu.

In Germany, according to Du Cange, voc. Baro, there is a distinction between Barones, and Semper-Barones; the latter holding their lands alodially.

(2) Du Cange, v. Salvamentum.

(3) Idem, ibidem.

as well as to vassalage. Military service vas sometimes the condition of this engagement. It was the law of France, so late at least as the commencement of the third race of kings, that no man could take a part in private wars, except in defence of his own lord. This we learn from an historian about the end of the tenth century, who relates that one Erminfrid, having been released from his homage to Count Burchard, on ceding the fief he had held of him to a monastery, renewed the ceremony on a war breaking out between Burchard and another nobleman, wherein he was desirous to give assistance; since, the author observes, it is not, nor has been the practice in France, for any man to be concerned in war, except in the presence, or by the command of his lord (1). Indeed there is reason to infer, from the Capitularies of Charles the Bald, that every man was bound to attach himself to some lord, though it was the privilege of a freeman to choose his own superior (2). And this is strongly supported by the analogy of our Anglo-Saxon laws, where it is frequently repeated, that no man should continue without a lord. There are too, as it seems to me, a great number of passages in Domesday-book, which confirm the distinction between personal commendation and the beneficiary tenure of land. Perhaps I may be thought to dwell too prolixly on this obscure custom; but as it tends to illustrate those mutual relations of lord and vassal, which supplied the place of regular government in the polity of Europe, and has seldom or never been explicitly noticed, its introduction seemed not improper.

Edict of Conrad the Salic.

It has been sometimes said that feuds were first rendered hereditary in Germany by Conrad II., sirnamed the Salic. This opinion is perhaps erroneous. But there is a famous edict of that emperor at Milan, in the year 1037, which, though immediately relating only to Lombardy, marks the full maturity of the system, and the last stage of its progress (3). I have remarked already the custom of sub-infeudation, or grants of lands by vassals to be held of themselves, which had grown up with the

(1) Recueil des Historiens, t. x. p. 333.

(2) Unusquisque liber homo, post mortem domini sui, licentiam habeat se commendandi inter hæc tria regna and quemcumque voluerit. Similiter et ille qui nondum alicui commendatus est. Baluzii Capitularia, t. i. p. 443. A. D. 866. Volumus etiam ut unusquisque liber homo in nostro regno seniorem qualem voluerit in nobis et in nostris fidelibus recipiat. Capit. Car. Calvi. A. D. 877. Et volumus ut cujuscumque nostram homo, in cujuscumque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus, pergat. Ibid. See too Baluze, t. i. p. 536, 537.

By the Establishments of St. Louis, c. 87., every stranger coming to settle within a barony was to acknowledge the baron as lord within a year and a day, or pay a fine. In some places, he even became the serf or villein of the lord. Ordonnances des Rois, p. 187. Upon this jealousy of unknown settlers, which pervades the policy of the middle ages, was founded the droit d'aubaine, or right to their moveables after their decease. See preface to Ordonnances des Rois, t. i. p. 15.

The article Commendatio in Du Cange's Glossary furnishes some hints upon this subject, which however that author does not seem to have fully apprehended. Carpentier, in his Supplement to the Glossary, under the word Vassaticum, gives the clearest notice of it that I have any where found. Since writing the above note, I have found the subject touched by M. de Montlosier, Hist. de la Monarchie Française, t. i. p. 354.

(3) Spelman tells us, in his Treatise of Feuds, chap. ii. that Conradus Salicus, *a French emperor, but of German descent*, [what can this mean?] went to Rome about 913 to fetch his crown from Pope John X., when, according to him, the succession of a son to his father's fief was first conceded. An almost unparalleled blunder in so learned a writer! Conrad the Salic was elected at Worms in 1024, crowned at Rome by John XIX. in 1027, and made this edict at Milan in 1037.

growth of these tenures. There had occurred, however, some disagreement for want of settled usage, between these inferior vassals and their immediate lords, which this edict was expressly designed to remove. Four regulations of great importance are established therein; that no man should be deprived of his fief, whether held of the emperor, or a mesne lord, but by the laws of the empire, and the judgment of his peers (1); that from such judgment an immediate vassal might appeal to his sovereign; that fiefs should be inherited by sons and their children; or in their failure, by brothers, provided they were *feuda paterna*, such as had descended from the father (2); and that the lord should not alienate the fief of his vassal without his consent (3).

Such was the progress of these feudal tenures, which determined the political character of every European monarchy where they prevailed, as well as formed the foundation of its jurisprudence. It is certainly inaccurate to refer this system, as is frequently done, to the destruction of the Roman empire by the northern nations, though in the beneficiary grants of those conquerors we trace its beginning. Five centuries, however, elapsed, before the alodial tenures, which had been incomparably the more general, gave way, and before the reciprocal contract of the feud attained its maturity. It is now time to describe the legal qualities and effects of this relation, so far only as may be requisite to understand its influence upon the political system.

Principles of a feudal relation.

The essential principle of a fief was a mutual contract of support and fidelity. Whatever obligations it laid upon the vassal of service to his lord, corresponding duties of protection were imposed by it on the lord towards his vassal (4). If these were transgressed on either side, the one forfeited his land, the other his seigniory or rights over it. Nor were motives of interest left alone to operate in securing the feudal connexion. The associations founded upon ancient custom and friendly attachment, the impulses of gratitude and honour, the dread of infamy, the sanctions of religion, were all employed to strengthen these ties, and to render them equally powerful with the relations of nature, and far

(1) Nisi secundum constitutionem antecessorum nostrorum, et judicium parium suorum; the very expressions of Magna Charta.

(2) "Gerardus noteth," says Sir H. Spelman, "that this law settled not the feud upon the eldest son, or any other son of the feudatory particularly; but left it in the lord's election to please himself with which he would." But the phrase of the edict runs, filios ejus beneficium tenere: which, when nothing more is said, can only mean a partition among the sons.

(3) The last provision may seem strange, at so advanced a period of the system; yet, according to Giannone, feuds were still revocable by the lord in some parts of Lombardy. Istoria di Napoli, l. xiii. c. 3. It seems, however, no more than had been already enacted by the first clause of this edict. Another interpretation is possible; namely, that the lord should not alienate his own seigniory without his vassals' consent, which was agreeable to the feudal tenures. This indeed would be putting rather a forced construction on the words, ne domino feudum militis alienare liceat.

(4) Crag. Jus Feudale, l. ii. tit. 11. Beaumanoir, Coutumes de Beauvoisis, c. lxi. p. 311. Ass. de Jérus. c. 217. Lib. Feud. l. ii. tit. 26. 47.

Upon the mutual obligation of the lord towards his vassal seems to be founded the law of warranty, which compelled him to make indemnification where the tenant was evicted of his land. This obligation, however unreasonable it may appear to us, extended, according to the feudal lawyers, to cases of mere donation. Crag. l. ii. tit. 4. Butler's Notes on Co. Litt. p. 365.

more so than those of political society. It is a question agitated among the feudal lawyers, whether a vassal is bound to follow the standard of his lord against his own kindred (1). It was one more important, whether he must do so against the king. In the works of those who wrote when the feudal system was declining, or who were anxious to maintain the royal authority, this is commonly decided in the negative. Littleton gives a form of homage, with a reservation of the allegiance due to the sovereign (2); and the same prevailed in Normandy and some other countries (3). A law of Frederic Barbarossa enjoins, that in every oath of fealty to an inferior lord, the vassal's duty to the emperor should be expressly reserved. But it was not so during the height of the feudal system in France. The vassals of Henry II. and Richard I. never hesitated to adhere to them against the sovereign, nor do they appear to have incurred any blame on the account. Even so late as the age of St. Louis, it is laid down in his Establishments, that if justice is refused by the king to one of his vassals, he might summon his own tenants, under penalty of forfeiting their fiefs, to assist him in obtaining redress by arms (4). The count of Britany, Pierre de Dreux, had practically asserted this feudal right during the minority of St. Louis. In a public instrument, he announced to the world, that having met with repeated injuries from the regent, and denial of justice, he had let the king know, that he no longer considered himself as his vassal, but renounced his homage and defied him (5).

Ceremonies of, 1. Homage.

The ceremonies used in conferring a fief were principally three: homage, fealty, and investiture. 1. The first was designed as a significant expression of the submission and devotedness of the vassal towards his lord. In performing homage, his head was uncovered, his belt ungirt, his sword and spurs removed; he placed his hands, kneeling, between those of the lord, and promised to become his man from thenceforward; to serve him with life and limb and worldly honour, faithfully and loyally, in consideration of the lands which he held under him. None but the lord in person could accept homage, which was commonly con-

(1) Craig. l. ii. tit. 4.

(2) Sect. lxxxv.

(3) Houard, Anc. Lois des François, p. 114. See too an instance of this reservation in Recueil des Historiens, t. xi. p. 447.

(4) Si le sire dit à son homme lige, Venez-vous-en avec moi, je veux guerroyer mon seigneur, qui me denie le jugement de sa cour, le vassal doit repondre: J'irai scavoir s'il est ainsi que vous me dites. Alors il doit aller trouver le supérieur, et luy dire: Sire, le gentilhomme de qui je tiens mon fief se plaint que vous lui refusez justice; je viens pour en scavoir la vérité; car je suis semoncé de marcher en guerre contre vous. Si la reponse est que volontiers il fera droit en sa cour, l'homme n'est point obligé de déférer à la requisition du sire; mais il doit, ou le suivre, ou se resoudre à perdre son fief, si le chef seigneur persiste dans son refus. Établissemens de St. Louis, c. 49. I have copied this from Velly, t. vi., p. 213. who has modernized the orthography, which is almost unintelligible in the Ordonnances des Rois. One MS. gives the reading *Roi* instead of *Seigneur*. And the law certainly applies to the king *exclusively*; for in case of denial of justice by a mesne lord there was an appeal to the king's court, but from his injury there could be no appeal but to the sword.

(5) Du Cange, Observations sur Joinville, in Collection des Mémoires, t. i. p. 196. It was always necessary for a vassal to renounce his homage, before he made war on his lord, if he would avoid the shame and penalty of feudal treason. After a reconciliation the homage was renewed. And in this no distinction was made between the king and another superior. Thus Henry II. did homage to the king of France in 1188, having renounced his former obligation to him at the commencement of the preceding war. Matt. Paris, p. 126.

2. Fealty.

cluded by a kiss (1). . 2. An oath of fealty was indispensable in every fief; but the ceremony was less peculiar than that of homage, and it might be received by proxy. It was taken by ecclesiastics, but not by minors; and in language differed little from the form of homage (2).

3. Investiture.

3. Investiture, or the actual conveyance of feudal lands, was of two kinds; proper and improper. The first was an actual putting in possession upon the ground, either by the lord or his deputy; which is called, in our law, livery of seisin. The second was symbolical, and consisted in the delivery of a turf, a stone, a wand, a branch, or whatever else might have been made usual by the caprice of local custom. Du Cange enumerates not less than ninety-eight varieties of investitures (3).

Obligations of a vassal.

Upon investiture, the duties of the vassal commenced. These it is impossible to define or enumerate; because the services of military tenure, which is chiefly to be considered, were in their nature uncertain, and distinguished as such from those incident to feuds of an inferior description. It was a breach of faith to divulge the lord's counsel, to conceal from him the machinations of others, to injure his person or fortune, or to violate the sanctity of his roof and the honour of his family (4). In battle he was bound to lend his horse to his lord, when dismounted; to adhere to his side, while fighting; and to go into captivity as a hostage for him, when taken. His attendance was due to the lord's courts, sometimes to witness, and sometimes to bear a part in, the administration of justice (5).

(1) Du Cange, Hominium, and Carpentier's Supplement, id. voc. Littleton, s. 85. Assises de Jérusalem, c. 204. Crag, l. i. tit. 11. Recueil des Historiens, t. ii. préface, p. 174. Homagium per paragium was unaccompanied by any feudal obligation, and distinguished from homagium ligeum, which carried with it an obligation of fidelity. The dukes of Normandy rendered only homage per paragium to the kings of France, and received the like from the dukes of Britany. In liege homage, it was usual to make reservations of allegiance to the king, or any other lord whom the homager had previously acknowledged.

(2) Littl. s. 91. Du Cange, voc. Fidelitas.

(3) Du Cange, voc. Investitura.

(4) Assises de Jérusalem, c. 265. Home ne dolt à la feme de son seigneur, ne à sa fille requerre vilainie de son cors, ne à sa sœur *tant com elle est demoiselle en son hostel*. I mention this part of feudal duty on account of the light it throws on the statute of treasons, 25 E. III. One of the treasons therein specified is, si omne violast la compaigne le roy, *ou leigné file le roy nient marié* ou la compaigne leigné fitz et heire le roy. Those who, like Sir E. Coke and the modern lawyers in general, explain this provision by the political danger of confusing the royal blood, do not apprehend its spirit. It would be absurd, upon such grounds, to render the violation of the king's eldest daughter treasonable, so long only as she remains unmarried, when, as is obvious, the danger of a spurious issue inheriting could not arise. I consider this provision therefore as entirely founded upon the feudal principles, which make it a breach of faith (that is, in the primary sense of the word, a treason) to sully the honour of the lord in that of the near relations who were immediately protected by residence in his house. If it is asked, why this should be restricted by the statute to the person of the eldest daughter, I can only answer that this, which is not more reasonable according to the common political interpretation, is analogous to many feudal customs in our own and other countries, which attribute a sort of superiority in dignity to the eldest daughter.

It may be objected that in the reign of Edward III. there was little left of the feudal principle in any part of Europe, and least of all in England. But the statute of treasons is a declaration of the ancient law, and comprehends, undoubtedly, what the judges who drew it could find in records now perished, or in legal traditions of remote antiquity. Similar causes of forfeiture are enumerated in the Libri Feudorum, l. i. tit. 5, and l. ii. tit. 24. In the Establishments of St. Louis, c. 51. 52., it is said, that a lord seducing his vassal's daughter, entrusted to his custody, lost his seigniory; a vassal guilty of the same crime towards the family of his suzerain, forfeited his land. A proof of the tendency which the feudal law had to purify public morals, and to create that sense of indignation and resentment with which we now regard such breaches of honour.

(5) Assises de Jérusalem, c. 222. A vassal, at least in many places, was bound to reside upon his fief, or not to quit it without the lord's consent.

Limitations of military service.

The measure, however, of military service was generally settled by some usage. Forty days was the usual term, during which the tenant of a knight's fee was bound to be in the field at his own expense (1). This was extended by St. Louis to sixty days, except when the charter of infeudation expressed a shorter period. But the length of service diminished with the quantity of land. For half a knight's fee but twenty days were due; for an eighth part, but five; and when this was commuted for an escuage or pecuniary assessment, the same proportion was observed (2). Men turned of sixty, public magistrates, and, of course, women, were free from personal service, but obliged to send their substitutes. A failure in this primary duty incurred perhaps strictly a forfeiture of the fief. But it was usual for the lord to inflict an amercement, known in England by the name of escuage (3). Thus in Philip III.'s expedition against the Count de Foix in 1274, barons were assessed, for their default of attendance, at a hundred sous a day for the expenses which they had saved, and fifty sous as a fine to the king; bannerets, at twenty sous for expenses, and ten as a fine: knights and squires in the same proportion. But barons and bannerets were bound to pay an additional assessment for every knight and squire of their vassals whom they ought to have brought with them into the field (4). The regulations as to place of service were less uniform than those which regard time. In some places, the vassal was not bound to go beyond the lord's territory (5), or only so far as he might return the same day. Other customs compelled him to follow his chief upon all his expeditions (6). These inconvenient and varying usages betray the origin of the feudal obli-

Du Cange, voc. Reseantia, Remanentia. Recueil des Historiens, t. xi. préface, p. 172.

(1) In the kingdom of Jerusalem, feudal service extended to a year. Assises de Jérusalem, c. 280. It is obvious, that this was founded on the peculiar circumstances of that state. Service of castle-guard, which was common in the north of England, was performed without limitation of time. Littleton's Henry II. vol. ii. p. 184.

(2) Du Cange, voc. Feudum militis; Membrum Loricæ. Stuart's View of Society, p. 382. This division by knights' fees is perfectly familiar in the feudal law of England. But I must confess my inability to adduce decisive evidence of it in that of France, with the usual exception of Normandy. According to the natural principle of fiefs, it might seem that the same personal service would be required from the tenant, whatever were the extent of his land. William the Conqueror, we know, distributed this kingdom into about 60,000 parcels of nearly equal value, from each of which the service of a soldier was due. He may possibly have been the inventor of this politic arrangement. Some rule must however have been observed in all countries in fixing the amercement for absence, which could only be equitable if it bore a just proportion to the value of the fief. And the principle of the knight's fee was so convenient and reasonable, that it is likely to have been adopted in imitation of England by other feudal countries. In the roll of Philip III.'s expedition, as will appear by a note immediately below, there are, I think, several presumptive evidences of it; and though this is rather a late authority to establish a feudal principle, yet I have ventured to assume it in the text.

The knight's fee was fixed in England at the annual value of 20*l*. Every estate supposed to be of this value, and entered as such in the rolls of the exchequer, was bound to contribute the service of a soldier, or to pay an escuage to the amount assessed upon knights' fees.

(3) Littleton, l. ii. c. 3. Wright's Tenures, p. 121.

(4) Du Chesne, Script. Rerum Gallicarum, t. v. p. 553. Daniel, Histoire de la Milice Françoise, p. 72. The following extracts from the muster-roll of this expedition will illustrate the varieties of feudal obligation. Johannes d'Ormoy debet servitium per quatuor dies. Johannes Malet debet servitium per viginti dies, pro quo servitio misit Richardum Tichet. Guido de Laval debet servitium duorum militum et dimidii. Dominus Sabrandus dictus Chabot dicit quod non debet servitium domino regi, nisi in comitatu Pictaviensi, et ad sumptus regis, tamen venit ad preces regis cum tribus militibus et duodecim scutiferis. Guido de Lusigniaco Dom. de Pierac dicit quod non debet aliquid regi præter homagium.

(5) This was the custom of Beauvoisis. Beaumanoir, c. 2.

(6) Du Cange, et Carpentier, voc. Hostis.

gations, not founded upon any national policy, but springing from the chaos of anarchy and intestine war, which they were well calculated to perpetuate. For the public defence, their machinery was totally unserviceable, until such changes were wrought, as destroyed the character of the fabric.

Feudal incidents.

Independently of the obligations of fealty and service, which the nature of the contract created, other advantages were derived from it by the lord, which have been called feudal incidents; these were. 1. Reliefs. 2. Fines upon alienation. 3. Escheats. 4. Aids; to which may be added, though not generally established. 5. Wardship, and 6. Marriage.

Reliefs.

1. Some writers have accounted for Reliefs in the following manner. Benefices, whether depending upon the crown or its vassals, were not originally granted by way of absolute inheritance, but renewed from time to time upon the death of the possessor, till long custom grew up into right. Hence a sum of money, something between a price and a gratuity, would naturally be offered by the heir on receiving a fresh investiture of the fief; and length of time might as legitimately turn this present into a due of the lord, as it rendered the inheritance of the tenant indefeasible. This is a very specious account of the matter. But those who consider the antiquity to which hereditary benefices may be traced, and the unreserved expressions of those instruments by which they were created, as well as the undoubted fact, that a large proportion of fiefs had been absolute alodial inheritances, never really granted by the superior, will perhaps be led rather to look for the origin of reliefs in that rapacity with which the powerful are ever ready to oppress the feeble. When a feudal tenant died, the lord, taking advantage of his own strength and the confusion of the family, would seize the estate into his hands, either by the right of force, or under some litigious pretext. Against this violence, the heir could in general have no resource but a compromise; and we know how readily acts of successful injustice change their name, and move demurely, like the wolf in the fable, under the clothing of law. Reliefs and other feudal incidents are said to have been established in France (1) about the latter part of the tenth century, and they certainly appear in the famous edict of Conrad the Salic, in 1037, which recognises the usage of presenting horses and arms to the lord upon a change of tenancy (2). But this also subsisted under the name of heriot, in England, as early as the reign of Canute.

A relief was a sum of money (unless where charter or custom introduced a different tribute) due from every one of full age, taking a fief by descent. This was in some countries arbitrary, or *ad misericordiam,* and the exactions practised under this pretence both

(1) Ordonnances des Rois de France, t. i. préface, p. 10.

(2) Servato usu valvassorum majorum in tradendis armis equisque suis senioribus. This, among other reasons, leads me to doubt the received opinion, that Italian fiefs were not hereditary before the promulgation of this edict.

upon superior and inferior vassals ranked amongst the greatest abuses of the feudal policy. Henri I. of England promises in his charter, that they shall in future be just and reasonable; but the rate does not appear to have been finally settled, till it was laid down in Magna Charta, at about the fourth of the annual value of the fief. We find also fixed reliefs among the old customs of Normandy and Beauvoisis. By a law of St. Louis, in 1245 (1), the lord was entitled to enter upon the lands, if the heir could not pay the relief, and possess them for a year. This right existed unconditionally in England under the name of primer seisin, but was confined to the king (2).

Fines upon alienation.

2. Closely connected with reliefs, were the fines paid to the lord, upon the alienation of his vassal's feud, and indeed we frequently find them called by the same name. The spirit of feudal tenure established so intimate a connexion between the two parties, that it could be dissolved by neither without requiring the other's consent. If the lord transferred his seigniory, the tenant was to testify his concurrence; and this ceremony was long kept up in England under the name of attornment. The assent of the lord to his vassal's alienation was still more essential, and more difficult to be attained. He had received his fief, it was supposed, for reasons peculiar to himself, or to his family; at least his heart and arm were bound to his superior; and his service was not to be exchanged for that of a stranger, who might be unable, or unwilling, to render it. A law of Lothaire II. in Italy forbids the alienation of fiefs, without the lord's consent (3). This prohibition is repeated in one of Frederic I., and a similar enactment was made by Roger king of Sicily (4). By the law of France the lord was entitled, upon every alienation made by his tenant, either to redeem the fief by paying the purchase-money, or to claim a certain part of the value, by way of fine, upon the change of tenancy (5). In England, even the practice of sub-infeudation, which was more conformable to the law of fiefs and the military genius of the system, but injurious to the suzerains, who lost thereby their escheats and

(1) Ordonnances des Rois, p. 55.

(2) Du Cange, v. Placitum, Relevium, Sporla. By many customs, a relief was due on every change of the lord, as well as of the vassal, but this was not the case in England. Beaumont speaks of reliefs as due only on collateral succession. Coutumes de Beauvoisis, c. 27. In Anjou and Maine they were not even due upon succession between brothers. Ordonnances des Rois, t. i. p. 58. And M. de Pastoret, in his valuable preface to the sixteenth volume of that collection, says it was a rule, that the king had nothing upon lineal succession of a fief, whether in the ascending or descending line, but *la bouche et les mains*; i. e. homage and fealty, p. 20.

(3) Lib. Feudorum, l. ii. tit. 9. and 52. This was principally levelled at the practice of alienating feudal property in favour of the church, which was called, pro animâ judicare. Radevicus in Gestis Frederic I. l. iv. c. 7. Lib. Feud. l. i. tit. 7. 16. l. ii. tit. 10.

(4) Giannone, l. ii. c. 5.

(5) Du Cange, v. Receccapitum, Placitum, Rachatum. Pastoret, préface au seizième tome des Ordonnances, p. 20. Houard, Dict. du Droit Normand, art. Fief. Argou, Inst. du Droit François, l. ii. c. ii. In Beaumanoir's age and district at least, sub-infeudation without the lord's licence incurred a forfeiture of the land; and his reason extends of course more strongly to alienation. Coutumes de Beauvoisis, c. 2. Velly, t. vi. p. 187. But, by the general law of feuds, the former was strictly regular, while the tenant forfeited his land by the latter. Craig mentions this distinction as one for which he is perplexed to account. Jus Feudale, l. iii. tit. 3. p. 632. It is however perfectly intelligible upon the original principles of feudal tenure.

other advantages of seigniory, was checked by Magna Charta (1), and forbidden by the Statute 18 Edward I. called Quia Emptores, which at the same time gave the liberty of alienating lands, to be holden of the grantor's immediate lord. The tenants of the crown were not included in this act; but that of 1 Edward III. c. 12. enabled them to alienate, upon the payment of a composition into chancery, which was fixed at one third of the annual value of the lands (2).

These restraints, placed for the lord's advantage upon the transfer of feudal property, are not to be confounded with those designed for the protection of heirs and preservation of families. Such were the *jus protimeseos,* in the books of the fiefs (3), and *retrait lignager* of the French law, which gave to the relations of the vendor a preemption upon the sale of any fief, and a right of subsequent redemption. Such was the positive prohibition of alienating a fief held by descent from the father (feudum paternum), without the consent of the kindred on that line (4). Such, too, were the still more rigorous fetters imposed by the English statute of entails, which precluded all lawful alienation, till, after two centuries, it was overthrown by the fictitious process of a common recovery. Though these partake in some measure of the feudal spirit, and would form an important head in the legal history of that system, it will be sufficient to allude to them in a sketch, which is confined to the developement of its political influence.

A custom very similar in effect to sub-infeudation, was the tenure by *frérage,* which prevailed in many parts of France. Primogeniture, in that extreme which our common law has established, was unknown, I believe, in every country upon the continent. The customs of France found means to preserve the dignity of families, and the indivisibility of a feudal homage, without exposing the younger sons of a gentleman to absolute beggary or dependence. Baronies indeed were not divided; but the eldest son was bound to make a provision in money, by way of apanage, for the other children, in proportion to his circumstances and their birth (5). As to inferior fiefs, in many places, an equal partition was made; in others, the eldest took the chief portion, generally two thirds, and

(1) Dalrymple seems to suppose, that the 32d chapter of Magna Charta relates to alienation, and not to sub-infeudation. Essay on Feudal Property, edit. 1758. p. 83. See Sir E. Coke, 2 Inst. p. 65. and 501.; and Wright on Tenures, contrà. Mr. Hargrave observes, that "the history of our law with respect to the powers of alienation before the statute of Quia emptores terrarum, is very much involved in obscurity." Notes on Co. Litt. 43. a. In Glanville's time, apparently, a man could only alienate (to hold of himself) rationabilem partem de terrâ suâ. l. vii. c. 1. But this may have been in favour of the kindred, as much as of the lord. Dalrymple's Essay, ubi suprà.

It is probable that Coke is mistaken in supposing that, "at the common law, the tenant might have made a feoffment of the whole tenancy to be holden of the lord."

(2) 2 Inst. p. 66. Blackstone's Commentaries, vol. ii. c. 5.

(3) Lib. Feud. l. v. t. 13. There were analogies to this jus προτιμησεως in the Roman law, and still more closely in the constitutions of the later Byzantine emperors.

(4) Alienatio feudi paterni non valet etiam domini voluntate, nisi agnatis consentientibus. Lib. Feud., apud Wright on tenures, p. 108. and 156.

(5) Du Cange, v. Apanamentum, Baro. Baronie ne depart mie entre freres se leur pere ne leur a fait partie; mes li ainsnez doit faire avenant bienfet au puisné, et si doit les filles marier. Établissem. de St. Louis, c. 24.

received the homage of his brothers for the remaining part, which they divided. To the lord of whom the fief was held, himself did homage for the whole (1). In the early times of the feudal policy, when military service was the great object of the relation between lord and vassal, this, like all other sub-infeudation, was rather advantageous to the former. For, when the homage of a fief was divided, the service was diminished in proportion. Suppose, for example, the obligation of military attendance for an entire manor to have been forty days; if that came to be equally split among two, each would owe but a service of twenty. But if, instead of being homagers to the same suzerain, one tenant held immediately of the other, as every feudatory might summon the aid of his own vassals, the superior lord would in fact obtain the service of both. Whatever opposition, therefore, was made to the rights of sub-infeudation or frérage, would indicate a decay in the military character, the living principle of feudal tenure. Accordingly, in the reign of Philip Augustus, when the fabric was beginning to shake, we find a confederate agreement of some principal nobles, sanctioned by the king, to abrogate the mesne tenure of younger brothers, and establish an immediate dependence of each upon the superior lord (2). This, however, was not universally adopted, and the original frérage subsisted to the last in some of the customs of France (3).

Escheats and forfeits.

3. As fiefs descended but to the posterity of the first taker, or at the utmost to his kindred, they necessarily became sometimes vacant for want of heirs; especially where, as in England, there was no power of devising them by will. In this case, it was obvious that they ought to revert to the lord, from whose property they had been derived. These reversions became more frequent through the forfeitures occasioned by the vassal's delinquency, either towards his superior lord, or the state. Various cases are laid down in the Assises de Jérusalem, where the vassal forfeits his land, for a year, for his life, or for ever (4). But under rapacious kings, such as the Norman line in England, absolute forfeitures came to prevail, and a new doctrine was introduced, the corruption of blood, by which the heir was effectually excluded from deducing his title, at any distant time, through an attainted ancestor.

Aids.

4. Reliefs, fines upon alienation, and escheats, seem to be natural reservations in the lord's bounty to his vassal. He had rights of another class which principally arose out of fealty and intimate attachment. Such were the aids which he was entitled to call for in certain prescribed circumstances. These

(1) This was also the law of Flanders and Hainault. Martenne, Thesaurus Anecdotor. t. i. p. 1092. The customs as to succession were exceedingly various, as indeed they continued to be until the late generalization of French law. Recueil des Histor. t. ii. préface, p. 106. Hist. de Languedoc, t. ii. p. 111. and 511. In the former work it is said that primogeniture was introduced by the Normans from Scandinavia.

(2) Ordonnances des Rois, t. i. p. 29.

(3) Du Cange, Dissert. III. sur Joinville. Beaumanoir, c. 47.

(4) C. 200, 201.

depended a great deal upon local custom, and were often extorted unreasonably. Du Cange mentions several as having existed in France; such as an aid for the lord's expedition to the Holy Land, for marrying his sister, or eldest son, and for paying a relief to his suzerain on taking possession of his land (1). Of these, the last appears to have been the most usual in England. But this, and other aids occasionally exacted by the lords, were felt as a severe grievance; and by Magna Charta three only are retained; to make the lord's eldest son a knight, to marry his eldest daughter, and to redeem his person from prison. They were restricted to nearly the same description by a law of William I. of Sicily, and by the customs of France (2). These feudal aids are deserving of our attention, as the beginnings of taxation, of which for a long time they in a great measure answered the purpose, till the craving necessities and covetous policy of kings substituted for them more durable and onerous burthens.

I might here, perhaps, close the enumeration of feudal incidents, but that the two remaining, wardship and marriage, though only partial customs, were those of our own country, and tend to illustrate the rapacious character of a feudal aristocracy.

Wardship.

5. In England, and in Normandy which either led the way to or adopted all these English institutions, the lord had the wardship of his tenant during minority (3). By virtue of this right, he had both the care of his person, and received to his own use the profits of the estate. There is something in this custom very conformable to the feudal spirit; since none was so fit as the lord to train up his vassal to arms, and none could put in so good a claim to enjoy the fief, while the military service for which it had been granted was suspended. This privilege of guardianship seems to have been enjoyed by the lord in some parts of Germany (4); but in the law of France, the custody of the land was entrusted to the next heir, and that of the person, as in socage tenures among us, to the nearest kindred of that blood which could not inherit (5). By

(1) Du Cange, voc. Auxilium.

(2) Giannone, l. xii. c. 5. Velly, t. vi. p. 200. Ordonnances des Rois, t. i. p. 138.; t. xvi. préface.

(3) Recueil des Historiens, t. xi. préf. p. 162. Argou, Inst. au Droit François, l. i. c. 6. Houard, Anciennes Lois des François, t. i. p. 147.

(4) Schilter, Institutiones Juris Feudalis, p. 85.

(5) Du Cange, v. Custodia. Assises de Jérusalem, c. 178. Établissemens de St. Louis, c. 17. Beaumanoir, c. 15. Argou, l. i. c. 6. The second of these uses nearly the same expression as Sir John Fortescue in accounting for the exclusion of the next heir from guardianship of the person; that mauvaise convoitise li fairoit faire la garde du loup.

I know not any mistake more usual in English writers who have treated of the feudal law, than that of supposing, that guardianship in chivalry was an universal custom. A charter of 1198, in Rymer, t. i. p. 105. seems indeed to imply that the incidents of garde noble and of marriage existed in the isle of Oleron. But Eleanor, by a later instrument, grants that the inhabitants of that island should have the wardship and marriage of their heirs without any interposition, and expressly abrogates all the evil customs that her husband had introduced, p. 112. From hence I should infer, that Henry II. had endeavoured to impose these feudal burthens (which perhaps were then new even in England) upon his continental dominions. Radulphus de Diceto tells us of a claim made by him to the wardship of Chateauroux in Berry, which could not legally have been subject to that custom. Thwysden, X. Scriptores, p. 599. And he set up pretensions to the custody of the duchy of Britany, after the death of his son Geoffrey. This might perhaps be justified by the law of Normandy, on which Britany depended. But Philip Augustus made a similar claim. In fact, these political assertions of right, prompted by ambition, and supported by force, are bad precedents to establish rules of jurisprudence. Both Philip and Henry

a gross abuse of this custom in England, the right of guardianship in chivalry, or temporary possession of the lands, was assigned over to strangers. This was one of the most vexatious parts of our feudal tenures, and was never perhaps more sorely felt, than in their last stage under the Tudor and Stuart families.

Marriage.

6. Another right given to the lord by the Norman and English laws was that of marriage, or of tendering a husband to his female wards, while under age, whom they could not reject without forfeiting the value of the marriage, that is, as much as any one would give to the guardian for such an alliance. This was afterwards extended to male wards, and became a very lucrative source of extortion to the crown, as well as to mesne lords. This custom seems to have had the same extent as that of wardships. It is found in the ancient books of Germany, but not of France (1). The kings, however, and even inferior lords of that country, required their consent to be solicited for the marriage of their vassals' daughters. Several proofs of this occur in the history, as well as in the laws of France; and the same prerogative existed in Germany, Sicily, and England (2). A still more remarkable law prevailed in the kingdom of Jerusalem. The lord might summon any female vassal to accept one of three whom he should propose as her husband. No other condition seems to have been imposed on him in selecting these suitors, than that they should be of equal rank with herself. Neither the maiden's coyness, nor the widow's affliction, neither aversion to the proffered candidates, nor love to one more favoured, seem to have passed as legitimate excuses. One, only one plea, could come from the lady's mouth, who was resolute to hold her land in single blessedness. It was, that she was past sixty years of age; and after this unwelcome confession, it is justly argued by the author of the law book which I quote, that the lord could not decently press her into matrimony (3). However outrageous such an usage may appear to our ideas, it is to be recollected that the peculiar circumstances of that little state rendered it indispensable to possess in every fief a proper vassal to fulfil the duties of war.

These feudal servitudes distinguish the maturity of the system. No trace of them appears in the capitularies of Charlemagne and his family, nor in the instruments by which benefices were granted. I believe that they did not make part of the regular feudal law be-

were abundantly disposed to realize so convenient a prerogative as that of guardianship in chivalry over the fiefs of their vassals. Littleton's Henry II. vol. iii. p. 441.

(1) Schilter, ubi suprà. Du Cange, voc. Disparagare, seems to admit this feudal right in France: but the passages he quotes do not support it. See also the word Maritagium.

(2) Ordonnances des Rois, t. i. p. 153. Assises de Jérus. c. 180. and Thaumassière's note. Du Cange, ubi suprà. Glanvil. l. vii. c. 12. Giannone, l. xi. c. 5. Wright on Tenures, p. 94. St. Louis in return declared that he would not marry his own daughter without the consent of his barons. Joinville, t. ii. p. 140. Henry I. of England had promised the same. The guardian of a female minor was obliged to give security to her lord not to marry her without his consent. Établissemens de St. Louis, c. 63.

(3) Ass. de Jérus. c. 224. I must observe, that Laurière says this usage prevailed en plusieurs lieux, though he quotes no authority. Ordonnances des Rois, p. 156.

fore the eleventh, or perhaps the twelfth century, though doubtless partial usages of this kind had grown up antecedently to either of those periods. If I am not mistaken, no allusion occurs to the lucrative rights of seigniory in the Assises de Jérusalem, which are a monument of French usages in the eleventh century. Indeed that very general commutation of allodial property into tenure, which took place between the middle of the ninth and eleventh centuries, would hardly have been effected, if fiefs had then been liable to such burthens and so much extortion. In half-barbarous ages, the strong are constantly encroaching upon the weak; a truth, which, if it needed illustration, might find it in the progress of the feudal system.

Proper and improper feuds.

We have thus far confined our inquiry to fiefs holden on terms of military service; since those are the most ancient and regular, as well as the most consonant to the spirit of the system. They alone were called proper feuds, and all were presumed to be of this description, until the contrary was proved by the charter of investiture. A proper feud was bestowed without price, without fixed stipulation, upon a vassal capable of serving personally in the field. But gradually, with the help of a little legal ingenuity, improper fiefs of the most various kinds were introduced, retaining little of the characteristics, and less of the spirit which distinguished the original tenures. Women, if indeed that were an innovation, were admitted to inherit them (1); they were granted for a price, and without reference to military service. The language of the feudal law was applied by a kind of metaphor to almost every transfer of property. Hence, pensions of money, and allowances of provisions, however remote from right notions of a fief, were sometimes granted under that name; and even where land was the subject of the donation, its conditions were often lucrative, often honorary, and sometimes ludicrous (2).

Fiefs of office.

There is one extensive species of feudal tenure which may be distinctly noticed. The pride of wealth in the middle ages was principally exhibited in a multitude of dependents. The court of Charlemagne was crowded with officers of every rank, some of the most eminent of whom exercised functions about the royal person, which would have been thought fit only for slaves in the palace of Augustus or Antonine. The free born Franks saw nothing menial in the titles of cup-bearer, steward, marshal, and master of the horse, which are still borne by the noblest families in every country of Europe, and by sovereign princes in the Empire.

(1) Women did not inherit fiefs in the German empire. Whether they were ever excluded from succession in France, I know not; the genius of a military tenure, and the old Teutonic customs, preserved in the Salic law, seem adverse to their possession of feudal lands; yet the practice, at least from the eleventh century downwards, does not support the theory.

(2) Crag. Jus Feudale, l. 1. tit. 10. Du Cange, voc. Feudum de Camerâ, etc. In the treaty between Henry I. of England and Robert count of Flanders, A. D. 1101, the king stipulates to pay annually 400 marks of silver, *in feodo*, for the military service of his ally. Rymer, Fœdera, t. i. p. 2.

From the court of the king, this favourite piece of magnificence descended to those of the prelates and barons, who surrounded themselves with household officers called ministerials; a name equally applied to those of a servile and of a liberal description (1). The latter of these were rewarded with grants of lands, which they held under a feudal tenure by the condition of performing some domestic service to the lord. What was called in our law grand serjeantry affords an instance of this species of fief (2). It is, however, an instance of the noblest kind; but Muratori has given abundance of proofs, that the commonest mechanical arts were carried on in the houses of the great by persons receiving lands upon those conditions (3).

These imperfect feuds, however, belong more properly to the history of law, and are chiefly noticed in the present sketch, because they attest the partiality manifested during the middle ages to the name and form of a feudal tenure. In the regular military fief we see the real principle of the system, which might originally have been defined, an alliance of free land-holders arranged in degrees of subordination according to their respective capacities of affording mutual support.

Feudal law books.

The peculiar and varied attributes of feudal tenures naturally gave rise to a new jurisprudence, regulating territorial rights in those parts of Europe which had adopted the system. For a length of time this rested in traditionary customs, observed in the domains of each prince or lord, without much regard to those of his neighbours. Laws were made occasionally by the emperor in Germany and Italy, which tended to fix the usages of those countries. About the year 1170, Girard and Obertus, two Milanese lawyers, published two books of the law of fiefs, which obtained a great authority, and have been regarded as the groundwork of that jurisprudence (4). A number of subsequent commentators swelled this code with their glosses and opinions, to enlighten or obscure the judgment of the imperial tribunals. These were chiefly civilians or canonists, who brought to the interpretation of old barbaric customs the principles of a very different school. Hence a manifest change was wrought in the law of feudal tenure, which they assimilated to the usufruct or the emphyteusis of the Roman code; modes of property somewhat analogous in appearance, but totally distinct in principle from the legitimate fief. These Lombard lawyers propagated a doctrine, which has been too readily received, that the feudal system originated in their country;

(1) Schmidt, Hist. des Allemands, t. iii. p. 92. Du Cange, v. Familia, Ministeriales.

(2) "This tenure," says Littleton, "is where a man holds his lands or tenements of our sovereign lord the king by such services as he ought to do in his proper person to the king, as to carry the banner of the king, or his lance, or to lead his array, or to be his marshal, or to carry his sword before him at his coronation, or to be his sewer at his coronation, or his carver, or his butler, or to be one of his chamberlains at the receipt of his exchequer, or to do other like services." Sect. 153.

(3) Antiq. Ital. Dissert. 11. and finem.

(4) Giannone, Ist. di Napoli, l. xiii. c. 3. The Libri Feudorum are printed in most editions of the Corpus Juris civilis.

and some writers upon jurisprudence, such as Duck and Sir James Craig, incline to give a preponderating authority to their code. But whatever weight it may have possessed within the limits of the empire, a different guide must be followed in the ancient customs of France and England (1). These were fresh from the fountain of that curious polity, with which the stream of Roman law had never mingled its waters. In England we know that the Norman system, established between the conquest and the reign of Henry II., was restrained by regular legislation, by paramount courts of justice, and by learned writings, from breaking into discordant local usages, except in a comparatively small number of places, and has become the principal source of our common law. But the independence of the French nobles produced a much greater variety of customs. The whole number collected and reduced to certainty in the sixteenth century amounted to two hundred and eighty-five, or omitting those inconsiderable for extent or peculiarity, to sixty. The earliest written customary in France is that of Bearn, which is said to have been confirmed by Viscount Gaston IV. in 1088 (2). Many others were written in the two subsequent ges, of which the customs of Beauvoisis, compiled by Beaumanoir under Philip III., are the most celebrated, and contain a mass of nformation on the feudal constitution and manners. Under Charles VII., an ordinance was made for the formation of a general code of customary law, by ascertaining for ever in a written collection those of each district; but the work was not completed till the reign of Charles IX. This was what may be called the common law of the *pays coutumiers*, or northern division of France, and the rule of all their tribunals, unless where controuled by royal edicts.

(1) Giannone explicitly contrasts the French and Lombard laws respecting fiefs. The latter was the foundation of the Libri Feudorum, and formed the common law of Italy. The former was introduced by Roger Guiscard into his dominions, in three books of constitutions, printed in Lindebrog's collection. There were several material differences, which Giannone enumerates, especially the Norman custom of primogeniture. Ist. di Nap. l. xi. c. 5.

(2) There are two editions of this curious old code; one at Pau, in 1552, republished with a fresh title-page and permission of Henry IV., in 1602; the other at Lescars, in 1633. These laws, as we read them, are subsequent to a revision made in the middle of the sixteenth century, in which they were more or less corrected. The basis, however, is unquestionably very ancient. We even find the composition for homicide preserved in them, so that murder was not a capital offence in Bearn, though robbery was such. Rubrica de Homicidis, Art. xxxi. See too Rubrica de pœnis, Art. i. and, ii.

PART II.

Analysis of the Feudal System—Its local extent—View of the different Orders of Society during the Feudal Ages—Nobility—their Ranks and Privileges—Clergy—Freemen—Serfs or Villeins—Comparative State of France and Germany—Privileges enjoyed by the French Vassals—Right of coining Money—And of private War—Immunity from Taxation—Historical View of the Royal Revenue in France—Methods adopted to augment it by depreciation of the Coin, etc.—Legislative Power—Its state under the Merovingian Kings—and Charlemagne—His Councils—Suspension of any general Legislative Authority during the prevalence of Feudal Principles—The King's Council—Means adopted to supply the Want of a National Assembly—Gradual Progress of the King's Legislative Power—Philip IV. assembles the States General—Their Powers limited to Taxation—States under the Sons of Philip IV.—States of 1355 and 1356—They nearly effect an entire Revolution—The Crown recovers its Vigour—States of 1380, under Charles VI.—Subsequent Assemblies under Charles VI. and Charles VII.—The Crown becomes more and more absolute—Louis XI.—States of Tours in 1484—Historical View of Jurisdiction in France—Its earliest stage under the first Race of Kings, and Charlemagne—Territorial Jurisdiction—Feudal Courts of Justice—Trial by Combat—Code of St. Louis—The Territorial Jurisdictions give way—Progress of the Judicial Power of the Crown—Parliament of Paris—Peers of France—Increased Authority of the Parliament—Registration of Edicts—Causes of the Decline of Feudal System—Acquisitions of Domain by the Crown—Charters of Incorporation granted to Towns—Their previous Condition—First Charters in the twelfth Century—Privileges contained in them—Military Service of Feudal Tenants commuted for Money—Hired Troops—Change in the Military System of Europe—General View of the Advantages and Disadvantages attending the Feudal System.

Analogies to the feudal tenure.

It has been very common to seek for the origin of feuds, or at least for analogies to them, in the history of various countries. But, though it is of great importance to trace the similarity of customs in different parts of the world, because it guides us to the discovery of general theorems as to human society, yet we should be on our guard against seeming analogies, which vanish away when they are closely observed. It is easy to find partial resemblances to the feudal system. The relation of patron and client in the Roman republic is not unlike that of lord and vassal, in respect of mutual fidelity; but it was not founded upon the tenure of land, nor military service. The veteran soldiers, and, in later times, some barbarian allies of the emperors, received lands upon condition of public defence; but they were bound not to an individual lord, but to the state. Such a resemblance to fiefs may be found in the Zemindaries of Hindostan, and the Timariots of Turkey. The clans of the Highlanders and Irish followed their chieftain into the field; but their tie was that of imagined kindred and respect for birth, not the spontaneous compact of vassalage. Much less can we extend the name of feud, though it is sometimes strangely misapplied, to the polity of Poland and Russia. All the Polish nobles were equal in rights, and independent of each other; all who were less than noble, were in servitude. No government can be more opposite to the long gradations and mutual duties of the feudal system (1).

(1) In civil history many instances might be found of feudal ceremonies in countries not regulated by the feudal law. Thus Selden has published an infeudation of a vayvod of Moldavia by the king of

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Extent of the feudal system.

The regular machinery and systematic establishment of feuds, in fact, may be considered as almost confined to the dominions of Charlemagne, and to those countries which afterwards derived it from thence. In England, it can hardly be thought to have existed in a complete state before the conquest. Scotland, it is supposed, borrowed it soon after from her neighbour. The Lombards of Benevento had introduced feudal customs into the Neapolitan provinces, which the Norman conquerors afterwards perfected. Feudal tenures were so general in the kingdom of Aragon, that I reckon it among the monarchies which were founded upon that basis (1). Charlemagne's empire, it must be remembered, extended as far as the Ebro. But in Castile (2) and Portugal they were very rare, and certainly could produce no political effect. Benefices for life were sometimes granted in the kingdoms of Denmark and Bohemia (3). Neither of these, however, nor Sweden nor Hungary, comes under the description of countries influenced by the feudal system (4). That system, however, after all these limitations, was so extensively diffused, that it might produce confusion, as well as prolixity, to pursue the collateral branches of its history in all the countries where it prevailed. But this embarrassment may be avoided without any loss, I trust, of important information. The English constitution will find its place in another portion of these volumes; and the political condition of Italy, after

Poland, A.D. 1485, in the regular forms, vol. iii. p. 514. But these political fiefs have hardly any connexion with the general system, and merely denote the subordination of one prince or people to another.

(1) It is probable that feudal tenure was as ancient in the north of Spain, as in the contiguous provinces of France. But it seems to have chiefly prevailed in Aragon about the twelfth and thirteenth centuries, when the Moors south of the Ebro were subdued by the enterprize of private nobles, who, after conquering estates for themselves, did homage for them to the king. James I., upon the reduction of Valencia, granted lands by way of fief, on condition of defending that kingdom against the Moors, and residing personally upon the estate. Many did not perform this engagement, and were deprived of the lands in consequence. It appears by the testament of this monarch, that feudal tenures subsisted in every part of his dominions. Martenne, Thesaurus Anecdotorum, t. i. p. 1141. 1155. An edict of Peter II. in 1210 prohibits the alienation of *emphyteuses* without the lord's consent. It is hard to say, whether regular fiefs are meant by this word. De Marca, Marca Hispanica, p. 1396. This author says, that there were no arriere-fiefs in Catalonia.

The Aragonese fiefs appear however to have differed from those of other countries in some respects. Zurita mentions fiefs *according to the custom of Italy*, which he explains to be such as were liable to the usual feudal aids for marrying the lord's daughter, and other occasions. We may infer, therefore, that these prestations were not customary in Aragon. Anales de Aragon, t. ii. p. 62.

(2) What is said of vassalage in Alfonzo X.'s code, as siete partidas, is short and obscure: nor am I certain that it meant any thing more than *voluntary commendation*, the custom mentioned in the former part of this chapter, from which the vassal might depart at pleasure. See, however, Du Cange, v. Honor, where authorities are given for the existence of Castilian fiefs; and I have met with occasional mention of them in history. I believe that tenures of this kind were introduced in the fourteenth and fifteenth centuries, but not to any great extent. Marina, Teoria de las Cortes, t. iii. p. 14.

Tenures of a feudal nature, as I collect from Freirii Institut. Juris Lusitani, tom. ii. t. 1. and 3. existed in Portugal, though the jealousy of the crown prevented the system from being established. There were even territorial jurisdictions in the kingdom, though not, at least originally, in Castile.

(3) Daniæ regni politicus status. Elzevir, 1629. Stransky, Respublica Bohemica. Ib. In one of the oldest Danish historians, Sweno, I have noticed this expression: Waldemarus, patris tunc politus *feodo*. Langebek, Scrip. Rerum Danic. t. i. p. 62. By this he means the duchy of Sleswic, not a fief, but an honour or government possessed by Waldemar. Saxo Grammaticus calls it more classically, paternæ præfecturæ dignitas. Sleswic was, in later times, sometimes held as a fief; but this does not in the least imply that lands in Denmark proper were feudal, of which I find no evidence.

(4) Though there were no feudal tenures in Sweden, yet the nobility and others were exempt from taxes on condition of serving the king with a horse and arms at their own expense; and a distinction was taken between *liber* and *tributarius*. But any one of the latter might become of the former class, or vice versâ. Sueciæ descriptio. Elzevir, 1631. p. 92.

the eleventh century, was not much affected, except in the kingdom of Naples, an inconsiderable object, by the laws of feudal tenure. I shall confine myself, therefore, chiefly to France and Germany; and far more to the former than the latter country. But it may be expedient first to contemplate the state of society in its various classes during the prevalence of feudal principles, before we trace their influence upon the national government.

Classes of society. Nobility.

It has been laid down already as most probable that no proper aristocracy, except that of wealth, was known under the early kings of France; and it was hinted that hereditary benefices, or, in other words, fiefs, might supply the link that was wanting between personal privileges and those of descent. The possessors of beneficiary estates were usually the richest and most conspicuous individuals in the state. They were immediately connected with the crown, and partakers in the exercise of justice and royal counsels. Their sons now came to inherit this eminence; and, as fiefs were either inalienable, or at least not very frequently alienated, rich families were kept long in sight; and, whether engaged in public affairs, or living with magnificence and hospitality at home, naturally drew to themselves popular estimation. The dukes and counts, who had changed their quality of governors into that of lords over the provinces intrusted to them, were at the head of this noble class. And in imitation of them, their own vassals, as well as those of the crown, and even rich alodialists, assumed titles from their towns or castles, and thus arose a number of petty counts, barons, and viscounts. This distinct class of nobility became co-extensive with the feudal tenures. For the military tenant, however poor, was subject to no tribute, no prestation, but service in the field; he was the companion of his lord in the sports and feasting of his castle, the peer of his court; he fought on horseback, he was clad in the coat of mail, while the commonalty, if summoned at all to war, came on foot, and with no armour of defence. As every thing in the habits of society conspired with that prejudice, which, in spite of moral philosophers, will constantly raise the profession of arms above all others, it was a natural consequence, that a new species of aristocracy, founded upon the mixed considerations of birth, tenure, and occupation, sprang out of the feudal system. Every possessor of a fief was a gentleman, though he owned but a few acres of land, and furnished his slender contribution towards the equipment of a knight. In the Libri Feudorum indeed, those who were three degrees removed from the emperor in order of tenancy, are considered as ignoble (1); but this is restrained to modern investitures; and in France, where subinfeudation was carried the farthest, no such distinction has met my observation (2).

(1) L. ii. t. 10.

(2) The nobility of an *alodial* possession, in France, depended upon its right to territorial jurisdiction. Hence there were *franc-aleux no-*

There still, however, wanted something to ascertain gentility of blood, where it was not marked by the actual tenure of land. This was supplied by two innovations devised in the eleventh and twelfth centuries; the adoption of sirnames, and of armorial bearings. The first are commonly referred to the former age, when the nobility began to add the names of their estates to their own, or, having any way acquired a distinctive appellation, transmitted it to their posterity (1). As to armorial bearings, there is no doubt that emblems somewhat similar have been immemorially used both in war and peace. The shields of ancient warriors, and devices upon coins or seals, bear no distant resemblance to modern blazonry. But the general introduction of such bearings, as hereditary distinctions, has been sometimes attributed to tournaments, wherein the champions were distinguished by fanciful devices; sometimes to the crusades, where a multitude of all nations and languages stood in need of some visible token to denote the banners of their respective chiefs. In fact, the peculiar symbols of heraldry point to both these sources, and have been borrowed in part from each (2). Hereditary arms were perhaps scarcely used by private families before the beginning of the thirteenth century (3). From that time, however, they became very general, and have contributed to elucidate that branch of history, whatever value we may assign to it, which regards the descent of illustrious families.

Its privileges.

When the privileges of birth had thus been rendered capable of legitimate proof, they were enhanced in a great degree, and a line drawn between the high born and ignoble classes, almost as broad as that which separated liberty from servitude. All offices of trust and power were conferred on the

bles, and *franc-aleux roturiers;* the latter of which were subject to the jurisdiction of the neighbouring lord. Loiseau, Traité des Seigneuries, p. 76. Denisart, Dictionnaire des Décisions, art. Franc-aleu.

(1) Mabillon, Traité de Diplomatique, liv. ii. ch. 7. The authors of the Nouveau Traité de Diplomatique, t. ii. p. 563., trace the use of sirnames in a few instances even to the beginning of the tenth century; but they did not become general, according to them, till the thirteenth.

(2) Mém. de l'Acad. des Inscriptions, t. xx. p. 579.

(3) I should be unwilling to make a negative assertion peremptorily in a matter of mere antiquarian research; but I am not aware of any decisive evidence that hereditary arms were borne in the twelfth century, except by a very few royal or almost royal families. Mabillon, Traité de Diplomatique, l. ii. c. 18. Those of Geoffrey the Fair, count of Anjou, who died in 1150, are extant on his shield: azure, four lions rampant or. Hist. Littéraire de la France, t. ix. p. 165. If arms had been considered as hereditary at that time, this should be the bearing of England, which, as we all know, differs considerably. Louis VII. sprinkled his seal and coin with fleurs de lys, a very ancient device, or rather ornament; and the same as what are sometimes called bees. The golden ornaments found in the tomb of Childeric I. at Tournay, which may be seen in the library of Paris, may pass either for fleurs de lys, or bees. Charles V. reduced the number to three, and thus fixed the arms of France. The counts of Toulouse used their cross in the twelfth age; but no other arms, Vaissette tells us, can be traced in Languedoc so far back. t. iii. p. 514.

Armorial bearings were in use among the Saracens during the later crusades, as appears by a passage in Joinville, t. i. p. 88. (Collect. des Mémoires) and Du Cange's note upon it. Perhaps however they may have been adopted in imitation of the Franks, like the ceremonies of knighthood. Villaret ingeniously conjectures, that the separation of different branches of the same family by their settlements in Palestine led to the use of hereditary arms, in order to preserve the connexion. t. xi. p. 113.

M. Sismondi, I observe, seems to entertain no doubt that the noble families of Pisa, including that whose name he bears, had their armorial distinctions in the beginning of the twelfth century. Hist. des Républ. Ital. t. i. p. 373. It is at least probable that the heraldic devices were as ancient in Italy as in any part of Europe. And the authors of Nouveau Traité de Diplomatique, t. iv. p. 383., incline to refer hereditary arms even in France to the beginning of the twelfth century; though without producing any evidence for this.

former; those excepted, which appertain to the legal profession. A plebeian could not possess a fief (1). Such at least was the original strictness: but as the aristocratic principle grew weaker, an indulgence was extended to heirs, and afterwards to purchasers (2). They were even permitted to become noble by the acquisition, or at least by its possession for three generations (3). But notwithstanding this ennobling quality of the land, which seems rather of an equivocal description, it became an established right of the crown to take, every twenty years, and on every change of the vassal, a fine known by the name of franc-fief, from plebeians in possession of land held by a noble tenure (4). A gentleman in France or Germany could not exercise any trade without derogating, that is, losing the advantages of his rank. A few exceptions were made, at least in the former country, in favour of some liberal arts, and of foreign commerce (5). But in nothing does the feudal haughtiness of birth more shew itself, than in the disgrace which attended unequal marriages. No children could inherit a territory held immediately of the empire, unless both their parents belonged to the higher class of nobility. In France, the offspring of a gentleman by a plebeian mother were reputed noble for the purposes of inheritance, and of exemption from tribute (6). But they could not be received into any order of chivalry, though capable of simple knighthood; nor were they considered as any better than a bastard class, deeply tainted with the alloy of their maternal extraction. Many instances occur where letters of nobility have been granted to re-instate them in their rank (7). For several purposes it was necessary to prove four, eight, sixteen, or a greater number of quarters, that is, of coats borne by paternal and maternal ancestors; and the same practice still subsists in Germany.

It appears, therefore, that the original nobility of the continent were what we may call self-created, and did not derive their rank

(1) We have no English word that conveys the full sense of *roturier*. How glorious is this deficiency in our political language, and how different are the ideas suggested by *commoner!* Roturier, according to Du Cange, is derived from ruptura-rius, a peasant, ab agrum rumpendo.

(2) The Establishments of St. Louis forbid this innovation, but Beaumanoir contends that the prohibition does not extend to descent or marriage. c. 48. The roturier who acquired a fief, if he challenged any one, fought with ignoble arms; but in all other respects was treated as a gentleman. ibid. Yet a knight was not obliged to do homage to the roturier who became his superior by the acquisition of a fief on which he depended. Carpentier, Supplement. ad Du Cange, voc. Homagium.

(3) Établissemens de St. Louis, c. 143. and note, in Ordonnances des Rois, t. i. See also preface to the same volume, p. xii. According to Mably, the possession of a fief did not cease to confer nobility (analogous to our barony by tenure) till the Ordonnance de Blois in 1579. Observations sur l'Hist. de France, l. iii. c. 1. note 6. But Laurière, author of the preface above cited, refers to Bouteiller, a writer of the fourteenth century, to prove that no one could become noble without the king's authority. The contradiction will not much perplex us, when we reflect on the disposition of lawyers to ascribe all prerogatives to the crown, at the expense of territorial proprietors, and of ancient customary law.

(4) The right, originally perhaps usurpation, called franc-fief, began under Philip the Fair. Ordonnances des Rois, t. i. p. 324. Denisart, Art. Franc-fief.

(5) Houard, Dict. du Droit Normand. Encyclopédie, Art. Noblesse. Argou, l. ii. c. 2.

(6) Nobility, to a certain degree, was communicated through the mother alone, not only by the custom of Champagne, but in all parts of France; that is, the issue were "gentilhommes du fait de leur corps," and could possess fiefs; but, says Beaumanoir, "la gentillesse par laquelle on devient chevalier, doit venir de par le père." c. 45. There was a proverbial maxim in French law, rather emphatic than decent, to express the derivation of gentility from the father, and of freedom from the mother.

(7) Beaumanoir, c. 45. Du Cange, Dissert. 10. sur Joinville. Carpentier, voc. Nobilitatio.

from any such concessions of their respective sovereigns, as have been necessary in subsequent ages. In England, the baronies by tenure might belong to the same class, if the lands upon which they depended had not been granted by the crown. But the kings of France, before the end of the thirteenth century, began to assume a privilege of creating nobles by their own authority, and without regard to the tenure of land. Philip the Hardy, in 1271, was the first French king who granted letters of nobility; under the reigns of Philip the Fair and his children they gradually became frequent (1). This effected a change in the character of nobility; and had as obvious a moral, as other events of the same age had a political influence, in diminishing the power and independence of the territorial aristocracy. The privileges originally connected with ancient lineage and extensive domains became common to the low-born creatures of a court, and lost consequently part of their title to respect. The lawyers, as I have observed above, pretended that nobility could not exist without a royal concession. They acquired themselves, in return for their exaltation of prerogative, an official nobility by the exercise of magistracy. The institutions of chivalry again gave rise to a vast increase of gentlemen; knighthood, on whomsoever conferred by the sovereign, being a sufficient passport to noble privileges. It was usual, perhaps, to grant previous letters of nobility to a plebeian for whom the honour of knighthood was designed.

Different orders of nobility.

In this noble or gentle class there were several gradations. All those, in France, who held lands immediately depending upon the crown, whatever titles they might bear, were comprised in the order of barons. These were, originally, the peers of the king's court; they possessed the higher territorial jurisdiction, and had the right of carrying their own banner into the field (2). To these corresponded the Valvassores majores and Capitanei of the empire. In a subordinate class were the vassals of this high nobility, who, upon the continent, were usually termed Vavassors; an appellation not unknown, though rare, in England (3). The Châtelains belonged to the order of Vavassors, as they held only arriere-fiefs: but having fortified houses, from which they derived their name, (a distinction very important in those times,) and possessing ampler

(1) Velly, t. vi. p. 432. Du Cange, and Carpentier, voce Nobilitare, etc. Boulainvilliers, Hist. de l'ancien Gouvernement de France, t. i. p. 317.

(2) Beaumanoir, c. 34. Du Cange, voc. Baro. Établissemens de St. Louis, l. i. c. 24.; l. ii. c. 36. The vassals of inferior lords were however called, improperly, Barons, both in France and England. Recueil des Historiens, t. xi. p. 300. Madox, Baronia Anglica, p. 133. In perfect strictness, those only, whose immediate tenure of the crown was older than the accession of Hugh Capet, were barons of France; namely, Bourbon, Coucy, and Beaujeu, or Beaujolois. It appears, however, by a register in the reign of Philip Augustus, that fifty-nine were reckoned in the class; the feudatories of the Capetian fiefs, Paris and Orleans, being confounded with the original vassals of the crown. Du Cange, voc. Baro.

(3) Du Cange, v. Vavassor. Velly, t. vi. p. 181. Madox, Baronia Anglica, p. 135. There is, perhaps, hardly any word more loosely used than Vavassor Bracton says, Sunt etiam Vavassores magnæ dignitatis viri. In France and Germany, they are sometimes named with much less honour. Je suis un chevalier né de cest pays, de *vavasseurs et de basse gent*, says a romance. This is to be explained by the poverty to which the subdivision of fiefs reduced idle gentlemen.

rights of territorial justice, they rose above the level of their fellows in the scale of tenure (1). But after the personal nobility of chivalry became the object of pride, the Vavassors, who obtained knighthood, were commonly styled bachelors; those who had not received that honour fell into the class of squires (2), or damoiseaux.

Clergy.

It will be needless to dwell upon the condition of the inferior clergy, whether secular or professed, as it bears little upon the general scheme of polity. The prelates and abbots, however, it must be understood, were completely feudal nobles. They swore fealty for their lands to the king or other superior, received the homage of their vassals, enjoyed the same immunities, exercised the same jurisdiction, maintained the same authority, as the lay lords among whom they dwelt. Military service does not appear to have been reserved in the beneficiary grants made to cathedrals and monasteries. But, when other vassals of the crown were called upon to repay the bounty of their sovereign by personal attendance in war, the ecclesiastical tenants were supposed to fall within the scope of this feudal duty, which men, little less uneducated and violent than their compatriots, were not reluctant to fulfil. Charlemagne exempted or rather prohibited them from personal service by several capitularies (3). The practice, however, as every one who has some knowledge of history will be aware, prevailed in succeeding ages. Both in national and private warfare, we find very frequent mention of martial prelates (4). But, contrary as this actual service might be to the civil as well as ecclesiastical laws, the clergy who held military fiefs were of course bound to fulfil the chief obligation of that tenure, and send their vassals into the field. We have many instances of their accompanying the army, though not mixing in the conflict; and even the parish priests headed the militia of their villages (5). The prelates however sometimes contrived to

(1) Du Cange, v. Castellanus. Coutumes de Poitou, tit. iii. Loiseau, Traité des Seigneuries, p. 160. Whoever had a right to a castle had la haute justice; this being so incident to the castle, that it was transferred along with it. There might however be a Seigneur haut-justicier below the Châtelain; and a ridiculous distinction was made as to the number of posts by which their gallows might be supported. A baron's instrument of execution stood on four posts; a châtelain's on three; while the inferior lord, who happened to possess la haute justice, was forced to hang his subjects on a two-legged machine. Coutumes de Poitou. Du Cange, v. Furca.

Laurière quotes from an old manuscript the following short scale of ranks. Duc est la première dignité, puis comtes, puis viscomtes, et puis baron, et puis châtelain, et puis vavasseur, et puis citaen, et puis villain. Ordonnances des Rois, t. i. p. 277.

(2) The sons of knights, and gentlemen not yet knighted, took the appellation of squires in the twelfth century. Vaissète, Hist. de Lang. t. ii. p. 513. That of damoiseau came into use in the thirteenth. Id. t. iii. p. 329. The latter was, I think, more usual in France. Du Cange gives little information as to the word squire (scutifer). "Apud Anglos," he says, "penultima est nobilitatis descriptio, inter Equitem et Generosum. Quod et alibi in usu fuit." Squire was not used as a title of distinction in England till the reign of Edward III., and then but sparingly. Though by Henry VI.'s time it was grown more common, yet none assumed it but the sons and heirs of knights, and some military men; except officers in courts of justice, who, by patent or prescription, had obtained that addition. Spelman's Posthumous Works, p. 234.

(3) Mably, l. i. c. 5. Baluze, t. i. p. 410. 932. 987. Any bishop, priest, deacon, or subdeacon bearing arms was to be degraded, and not even admitted to lay communion. Id. p. 932.

(4) One of the latest instances probably of a fighting bishop is Jean Montaigu, archbishop of Sens, who was killed at Azincourt. Monstrelet says, that he was "non pas en estat pontifical, car au lieu de mitre il portoit un bacinet, pour dalmatique portoit un haubergeon, pour chasuble la pièce d'acier; et au lieu de crosse, portoit une hache." fol. 132.

(5) Daniel, Hist. de la Milice Françoise, t. i. p. 83.

avoid this military service, and the payments introduced in commutation for it, by holding lands in frank-almoigne, a tenure which exempted them from every species of obligation, except that of saying masses for the benefit of the grantor's family (1). But notwithstanding the warlike disposition of some ecclesiastics, their more usual inhability to protect the estates of their churches against rapacious neighbours suggested a new species of feudal relation and tenure. The rich abbeys elected an advocate, whose business it was to defend their interests, both in secular courts, and, if necessary, in the field. Pepin and Charlemagne are styled Advocates of the Roman church. This indeed was on a magnificent scale; but in ordinary practice, the advocate of a monastery was some neighbouring lord, who, in return for his protection, possessed many lucrative privileges, and, very frequently, considerable estates by way of fief from his ecclesiastical clients. Some of these advocates are reproached with violating their obligation, and becoming the plunderers of those whom they had been retained to defend (2).

The classes below the gentry may be divided into freemen and villeins. Of the first were the inhabitants of chartered towns, the citizens and burghers, of whom more will be said presently. As to those who dwelt in the country, we can have no difficulty in recognizing, so far as England is concerned, the socagers, whose tenure was free, though not so noble as knight's service, and a numerous body of tenants for term of life, who formed that ancient basis of our strength, the English yeomanry. But the mere freemen are not at first sight so distinguishable in other countries. In French records and law books of feudal times, all besides the gentry are usually confounded under the names of villeins or hommes de pooste (gens potestatis) (3). This proves the slight estimation in which all persons of ignoble birth were considered. For undoubtedly there existed a great many proprietors of land and others, as free, though not as privileged, as the nobility. In the south of France, and especially Provence, the number of freemen is remarked to have been greater than in the parts on the right bank of the Loire, where the feudal tenures were almost universal (4). I shall quote part of a passage in Beaumanoir, which points out this distinction of ranks pretty fully. "It should be known," he says (5), "that there are three conditions of men in this world; the first, is that of gentlemen; and the second, is that of such as are naturally free, being born of a free mother.

(1) Du Cange, Eleemosyna Libera. Madox, Baronia Angl. p. 115. Coke on Littleton, and other English law books.

(2) Du Cange, v. Advocatus; a full and useful article. Recueil des Historiens, t. xi. préface, p. 184.

(3) Homo potestatis, non nobilis—Ita nuncupantur, quod in potestate domini sunt—Opponuntur viris nobilibus; apud Butilerium Consuetudinarii vocantur, Coustumiers, prestationibus scilicet obnexii et operis. Du Cange, v. Potestas. As all these freemen were obliged, by the ancient laws of France, to live under the protection of some particular lord, and found great difficulty in chusing a new place of residence, as they were subject to many tributes and oppressive claims on the part of their territorial superiors, we cannot be surprised that they are confounded, at this distance, with men in actual servitude.

(4) Heeren, Essai sur les croisades, p. 122.

(5) Coutumes de Beauvoisis, c. 45. p. 256.

All who have a right to be called gentlemen are free, but all who are free are not gentlemen. Gentility comes by the father, and not by the mother; but freedom is derived from the mother only: and whoever is born of a free mother, is himself free, and has free power to do any thing that is lawful."

Serfs or villeins.

In every age and country, until times comparatively recent, personal servitude appears to have been the lot of a large, perhaps the greater, portion of mankind. We lose a good deal of our sympathy with the spirit of freedom in Greece and Rome, when the importunate recollection occurs to us, of the tasks which might be enjoined, and the punishments which might be inflicted, without controul either of law or opinion, by the keenest patriot of the Comitia, or the Council of Five Thousand. A similar, though less powerful, feeling will often force itself on the mind, when we read the history of the middle ages. The Germans, in their primitive settlements, were accustomed to the notion of slavery, incurred not only by captivity, but by crimes, by debt, and especially by loss in gaming. When they invaded the Roman empire, they found the same condition established in all its provinces. Hence, from the beginning of the æra now under review, servitude, under somewhat different modes, was extremely common. There is some difficulty in ascertaining its varieties and stages. In the Salic laws, and in the Capitularies, we read not only of Servi, but of Tributarii, Lidi, and Coloni, who were cultivators of the earth, and subject to residence upon their master's estate, though not destitute of property, or civil rights (1). Those who appertained to the demesne lands of the crown were called Fiscalini. The composition for the murder of one of these was much less than that for a freeman (2). The number of these servile cultivators was undoubtedly great, yet in those early times, I should conceive, much less than it afterwards became. Property was for the most part in small divisions, and a Frank who could hardly support his family upon a petty alodial patrimony was not likely to encumber himself with many servants. But the accumulation of overgrown private wealth had a natural tendency to make slavery more frequent. Where the small proprietors lost their lands by mere rapine, we may believe that their liberty was hardly less endangered (3).

(1) These passages are too numerous for reference. In a very early charter in Martenne's Thesaurus Anecdotorum, t. i. p. 20., lands are granted, cum hominibus ibidem permanentibus, quos *colonario ordine vivere* constituimus. Men of this class were called in Italy Aldiones. A Lombard capitulary of Charlemagne says: Aldiones eâ lege vivunt in Italiâ sub servitute dominorum suorum, quâ Fiscalini, vel Lidi, vivunt in Franciâ.—Muratori, Dissert. 14.

(2) Originally it was but 45 solidi. Leges Salicæ, c. 43. But Charlemagne raised it to 100. Baluzii Capitularia, p. 402. There are several provisions in the laws of this great and wise monarch in favour of liberty. If a lord claimed any one either as his villein or slave, (colonus sive servus,) who had escaped beyond his territory, he was not to be given up till strict inquiry had been made in the place to which he was asserted to belong, as to his condition, and that of his family, p. 400. And if the villein shewed a charter of enfranchisement, the proof of its forgery was to lie upon the lord. No man's liberty could be questioned in the Hundred-court.

(3) Montesquieu ascribes the increase of personal servitude in France to the continual revolts and commotions under the two first dynasties, l. xxx. c. 11.

Even where this was not the case, yet, as the labour either of artisans or of free husbandmen was but sparingly in demand, they were often compelled to exchange their liberty for bread (1). In seasons also of famine, and they were not unfrequent, many freemen sold themselves to slavery. A capitulary of Charles the Bald in 864 permits their redemption at an equitable price (2). Others became slaves, as more fortunate men became vassals, to a powerful lord, for the sake of his protection. Many were reduced into this state through inability to pay those pecuniary compositions for offences, which were numerous and sometimes heavy in the barbarian codes of law; and many more by neglect of attendance on military expeditions of the king, the penalty of which was a fine called Heribann, with the alternative of perpetual servitude (3). A source of loss of liberty which may strike us as more extraordinary was superstition; men were infatuated enough to surrender themselves, as well as their properties, to churches and monasteries, in return for such benefits as they might reap by the prayers of their new masters (4).

The characteristic distinction of a villein was his obligation to remain upon his lord's estate. He was not only precluded from selling the lands upon which he dwelt; but his person was bound, and the lord might reclaim him at any time, by suit in a court of justice, if he ventured to stray. But, equally liable to this confinement, there were two classes of villeins, whose condition was exceeding different. In England, at least from the reign of Henry II., one only, and that the inferior species, existed; incapable of property, and destitute of redress, except against the most outrageous injuries (5). The lord could seize whatever they acquired or inherited, or convey them, apart from the land, to a stranger. Their tenure bound them to what were called villein services, ignoble in their nature, and indeterminate in their degree; the felling of timber, the carrying of manure, the repairing of roads for their lord, who seems to have possessed an equally unbounded right over their labour and its fruits. But by the customs of France and Germany, persons in this abject state seem to have been called serfs, and distinguished from villeins, who were only bound to fixed payments and duties in respect of their lord, though, as it seems, without any legal redress, if injured by him (6). "The third estate of men," says Beau-

(1) Du Cange, v. Obnoxatio.

(2) Baluzii Capitularia. The Greek traders purchased famished wretches on the coasts of Italy, whom they sold to the Saracens. Muratori, Annali d'Italia. A. D. 785. Much more would persons in this extremity sell themselves to neighbouring lords.

(3) Du Cange, Heribannum. A full heribannum was 60 solidi; but it was sometimes assessed in proportion to the wealth of the party.

(4) Beaumanoir, c. 48.

(5) Littleton, l. ii. c. 11. Non potest aliquis, says Glanvil.) in villenagio positus, libertatem suam propriis denariis suis quærere—quia omnia catalla cujuslibet nativi intelliguntur esse in potestate domini sui. L. v. c. 5.

(6) This is clearly expressed in a French law book of the thirteenth century, the Conseil of Pierre des Fontaines. quoted by Du Cange, voc. Villanus. Et sache bien que selon Dieu tu n'as mie pleniere poesté sur ton vilain. Dont se tu prens du sien fors les droites redevances, que te doit, tu les prens contre Dieu, et sur le peril de t'ame et come robierres. Et ce qu'on dit toutes les choses que vilains a, sont au Seigneur, c'est voirs a garder. Car s'il estoient son seigneur propre, i

manoir, in the passage above quoted, "is that of such as are not free; and these are not all of one condition, for some are so subject to their lord that he may take all they have, alive or dead, and imprison him whenever he pleases, being accountable to none but God; while others are treated more gently, from whom the lord can take nothing but customary payments, though at their death all they have escheats to him (1)."

Under every denomination of servitude, the children followed their mother's condition; except in England, where the father's state determined that of the children; on which account, bastards of female villeins were born free; the law presuming the liberty of their father (2). The proportion of freemen, therefore, would have been miserably diminished, if there had been no reflux of the tide, which ran so strongly towards slavery. But the usage of manumission made a sort of circulation between these two states of mankind. This, as is well known, was an exceedingly common practice with the Romans; and is mentioned, with certain ceremonies prescribed, in the Frankish and other early laws. The clergy, and especially several popes, enforced it as a duty upon laymen; and inveighed against the scandal of keeping Christians in bondage (3). But they were not, it is said, equally ready in performing their own parts; the villeins upon church lands were among the last who were emancipated (4). As society advanced in Europe, the manumission of slaves grew more frequent (5). By the indulgence of custom in some places, or perhaps by original convention, villeins might possess property, and thus purchase their own redemption. Even where they had no legal title to pro-

General abolition of villenage.

n'avoit nule difference entre serf et vilain, mais par notre usage n'a entre toi et ton vilain juge fors Dieu, tan com il est tes couchans et tes levans, s'il n'a autre loi vers toi fors la commune. This seems to render the distinction little more than theoretical.

(1) Beaumanoir, c. 45. Du Cange, Villanus, Servus, and several other articles. Schmidt, Hist. des Allemands, t. ii. p. 171. 435. By a law of the Lombards, a free woman who married a slave might be killed by her relations, or sold; if they neglected to do so, the fisc might claim her as its own. Muratori, Dissert. 14. In France also, she was liable to be treated as a slave. Marculfi Formulæ, l. ii. c. 29. Even in the twelfth century, it was the law of Flanders, that whoever married a villein became one himself, after he had lived with her a twelvemonth. Recueil des Historiens, t. xiii. p. 330. And, by a capitulary of Pepin, if a man married a villein believing her to be free, he might repudiate her and marry another. Baluze, p. 181.

Villeins themselves could not marry without the lord's licence, under penalty of forfeiting their goods, or at least of a mulct. Du Cange, v. Forismaritagium. This seems to be the true origin of the famous mercheta mulierum, which has been ascribed to a very different custom. Du Cange, v. Mercheta Mulierum. Dalrymple's Annals of Scotland, vol. i. p. 312. Archæologia, vol. xii. p. 31.

(2) Littleton, s. 188. Bracton indeed holds, that the spurious issue of a neif, though by a free father, should be a villein, quia sequitur conditionem matris, quasi vulgo conceptus, l. i. c. 6. But the laws of Henry I. declare, that a son should follow his father's condition; so that this peculiarity is very ancient in our law. Leges Hen. I. c. 75. and 77.

(3) Enfranchisements by testaments are very common. Thus, in the will of Seniofred, count of Barcelona, in 966, we find the following piece of corrupt Latin: de ipsos meos servos et ancillas, illi qui traditi fuerunt faciatis illos liberos propter remedium animæ meæ; et alii qui fuerunt de parentorum meorum remaneant ad fratres meos. Marca Hispanica, p. 887.

(4) Schmidt, Hist. des All. t. i. p. 361. See, however, a charter of manumission from the chapter of Orleans, in 1224, to all their slaves, under certain conditions of service. Martenne, Thesaurus Anecdot. t. i. p. 914. Conditional manumissions were exceedingly common. Du Cange, v. Manumissio; a long article.

(5) No one could enfranchise his villein without the superior lord's consent; for this was to diminish the value of his land, *apeticer le fief*. Beaumanoir, c. 15. Établissemens de St. Louis, c. 34. It was necessary, therefore, for the villein to obtain the suzerain's confirmation; otherwise he only changed masters and escheated, as it were, to the superior; for the lord who had granted the charter of franchise was *estopped* from claiming him again.

perty, it was accounted inhuman to divest them of their little possession (the peculium of Roman law); nor was their poverty, perhaps, less tolerable, upon the whole, than that of the modern peasantry in most countries of Europe. It was only in respect of his lord, it must be remembered, that the villein, at least in England, was without rights (1); he might inherit, purchase, sue in the courts of law; though, as defendant in a real action, or suit wherein land was claimed, he might shelter himself under the plea of villenage. The peasants of this condition were sometimes made use of in war, and rewarded with enfranchisement; especially in Italy, were the cities and petty states had often occasion to defend themselves with their own population; and in peace the industry of free labourers must have been found more productive and better directed. Hence the eleventh and twelfth centuries saw the number of slaves in Italy begin to decrease; early in the fifteenth, a writer quoted by Muratori speaks of them as no longer existing (2). The greater part of the peasants in some countries of Germany had acquired their liberty before the end of the thirteenth century; in other parts, as well as in all the northern and eastern regions of Europe, they remained in a sort of villenage till the present age. Some very few instances of predial servitude have been discovered in England, so late as the time of Elizabeth (3), and perhaps they might be traced still lower. Louis Hutin, in France, after innumerable particular instances of manumission had taken place, by a general edict in 1315, reciting that his kingdom is denominated the kingdom of the Franks, that he would have the fact to correspond with the name, emancipates all persons in the royal domains upon paying a just composition, as an example for other lords possessing villeins to follow (4). Philip the Long renewed the same edict three years afterwards; a proof that it had not been carried into execution (5). Indeed there are letters of the former prince, wherein, considering that many of his subjects are not apprized of the extent of the benefit conferred upon them, he directs his officers to tax them as high as their fortunes can well bear (6).

(1) Littleton, s. 189. Perhaps this is not applicable to other countries. Villeins were incapable of being received as witnesses against freemen. Recueil des Historiens, t. xiv. préface, p. 65. There are some charters of kings of France admitting the serfs of particular monasteries to give evidence, or to engage in the judicial combat, against freemen. Ordonnances des Rois, t. i. p. 3. But I do not know that their testimony, except against their lord, was ever refused in England; their state of servitude not being absolute, like that of negroes in the West Indies, but particular and relative, as that of an apprentice or hired servant. This subject, however, is not devoid of obscurity; and I may probably return to it in another place.

(2) Dissert. 14.

(3) Barrington's Observations on the ancient Statutes, p. 274.

(4) Ordonnances des Rois, t. i. p. 653.

(5) Id. p. 653.

(6) Velly, t. viii. p. 38. Philip the Fair had emancipated the villeins in the royal domains throughout Languedoc, retaining only an annual rent for their lands, which thus became *censives*, or *emphyteuses*. It does not appear by the charter, that he sold this enfranchisement, though there can be little doubt about it. He permitted his vassals to follow the example. Vaissette, Hist. de Languedoc, t. iv. Appendix, p. 3. and 12.

It is not generally known, I think, that predial servitude was not abolished in all parts of France till the revolution. In some places, says Pasquier, the peasants are taillables à volonté, that is, their contribution is not permanent, but assessed by the lord with the advice of prud'hommes, reasseants sur les lieux, according to the peasant's ability. Others pay a fixed sum. Some are called serfs de poursuite, who cannot leave their habitations, but may be followed by the lord into any part of France for the taille upon their goods. This was the case

It is deserving of notice that a distinction existed from very early times in the nature of lands, collateral, as it were, to that of persons. Thus we find mansi ingenui and mansi serviles in the oldest charters, corresponding to the bocland and folkland of the Anglo-Saxons, the liberum tenementum and villenagium, or freehold and copyhold of our later law. In France, all lands held in *roture* appear to be considered as villein tenements, and are so termed in Latin, though many of them rather answer to our socage freeholds. But, although originally this servile quality of lands was founded on the state of their occupiers, yet there was this particularity, that lands never changed their character along with that of the possessor; so that a nobleman might, and often did, hold estates in roture, as well as a roturier acquire a fief. Thus in England the terre tenants in villenage, who occur in our old books, were not villeins, but freemen holding lands which had been from time immemorial of a villein quality.

Comparative state of France and Germany.

At the final separation of the French from the German side of Charlemagne's empire by the treaty of Verdun in 843, there was perhaps hardly any difference in the constitution of the two kingdoms. If any might be conjectured to have existed, it would be a greater independence, and fuller rights of election in the nobility and people of Germany. But in the lapse of another century, France had lost all her political unity, and her kings all their authority; while the Germanic empire was entirely unbroken, under an effectual, though not absolute, controul of its sovereign. No comparison can be made between the power of Charles the Simple and Conrad the First, though the former had the shadow of an hereditary right, and the latter was chosen from among his equals. A long succession of feeble princes or usurpers, and destructive incursions of the Normans, reduced France almost to a dissolution of society; while Germany, under Conrad, Henry, and the Othos, found their arms not less prompt and successful against revolted vassals, than external enemies. The high dignities were less completely hereditary than they

in part of Champagne, and the Nivernois. Nor could these serfs, or gens de main-morte, as they were sometimes called, be manumitted without letters patent of the king, purchased by a fine. Recherches de la France, l. iv. c. 5. Du Bos informs us that in 1551, the Tiers Etat prayed the king to cause all serfs (*hommes de poote*) to be enfranchised on paying a composition; but this was not complied with, and they existed in many parts when he wrote. Histoire Critique, t. iii. p. 296. Argou, in his Institutions du Droit François, confirms this, and refers to the customaries of Nivernois and Vitry, l. i. c. 1. And M. de Bréquigny, in his preface to the twelfth volume of the Collection of Ordonnances, p. 22., says, that throughout almost the whole jurisdiction of the parliament of Besançon, the peasants were attached to the soil, not being capable of leaving it without the lord's consent; and that in some places he even inherited their goods in exclusion of the kindred. I recollect to have read in some part of Voltaire's correspondence an anecdote of his interference, with that zeal against oppression, which is the shining side of his moral character, in behalf of some of these wretched slaves of Franche-Comté.

About the middle of the fifteenth century, some Catalonian serfs who had escaped into France being claimed by their lords, the parliament of Toulouse declared, that every man who entered the kingdom *en criant France* should become free. The liberty of our kingdom is such, says Mezeray, that its air communicates freedom to those who breathe it, and our kings are too august to reign over any but freemen. Villaret, t. xv. p. 348. How much pretence Mezeray had for such a flourish, may be decided by the former part of this note.

had become in France; they were granted, indeed, pretty regularly, but they were solicited as well as granted; while the chief vassals of the French crown assumed them as patrimonial sovereignties, to which a royal investiture gave more of ornament than sanction.

In the eleventh century, these imperial prerogatives began to lose part of their lustre. The long struggles of the princes and clergy against Henry IV. and his son, the revival of more effective rights of election on the extinction of the house of Franconia, the exhausting contests of the Swabian emperors in Italy, the intrinsic weakness produced by a law of the empire, according to which the reigning sovereign could not retain an imperial fief more than a year in his hands, gradually prepared that independence of the German aristocracy, which reached its height about the middle of the thirteenth century. During this period the French crown had been insensibly gaining strength; and as one monarch degenerated into the mere head of a confederacy, the other acquired unlimited power over a solid kingdom.

It would be tedious, and not very instructive, to follow the details of German public law during the middle ages: nor are the more important parts of it easily separable from civil history. In this relation, they will find a place in a subsequent chapter of the present work. France demands a more minute attention; and in tracing the character of the feudal system in that country, we shall find ourselves developing the progress of a very different polity.

Privileges of the French vassals.

To understand in what degree the peers and barons of France, during the prevalence of feudal principles, were independent of the crown, we must look at their leading privileges. These may be reckoned: 1. The right of coining money; 2. That of waging private war; 3. The exemption from all public tributes, except the feudal aids; 4. The freedom from legislative controul; and, 5. The exclusive exercise of original judicature in their dominions. Privileges so enormous and so contrary to all principles of sovereignty might lead us, in strictness, to account France rather a collection of states, partially allied to each other, than a single monarchy.

Coining money.

I. Silver and gold were not very scarce in the first ages of the French monarchy; but they passed more by weight than by tale. A lax and ignorant government, which had not learned the lucrative mysteries of a royal mint, was not particularly solicitous to give its subjects the security of a known stamp in their exchanges (1). In some cities of France, money appears to

(1) The practice of keeping fine gold and silver uncoined prevailed among private persons, as well as in the treasury, down to the time of Philip the Fair. Nothing is more common than to find, in the instruments of earlier times, payments or fines stipulated by weight of gold or silver. Le Blanc therefore thinks, that little money was coined in France, and that only for small payments. Traité des Monnoyes. It is curious, that though there are many gold coins extant of the first race of kings,

have been coined by private authority before the time of Charlemagne; at least one of his capitularies forbids the circulation of any that had not been stamped in the royal mint. His successors indulged some of their vassals with the privilege of coining money for the use of their own territories, but not without the royal stamp. About the beginning of the tenth century, however, the lords, among their other assumptions of independence, issued money with no marks but their own (1). At the accession of Hugh Capet, as many as a hundred and fifty are said to have exercised this power. Even under St. Louis, it was possessed by about eighty; who, excluding as far as possible the royal coin from circulation, enriched themselves at their subjects' expense by high duties (seigniorages), which they imposed upon every new coinage, as well as by debasing its standard (2). In 1185, Philip Augustus requests the abbot of Corvey, who had desisted from using his own mint, to let the royal money of Paris circulate through his territories; promising that when it should please the abbot to coin money afresh for himself, the king would not oppose its circulation (3).

Several regulations were made by Louis IX., to limit, as far as lay in his power, the exercise of this baronial privilege; and, in particular, by enacting that the royal money should circulate in the domains of those barons who had mints, concurrently with their own; and exclusively within the territories of those who did not enjoy that right. Philip the Fair established royal officers of inspection in every private mint. It was asserted in his reign, as a general truth, that no subject might coin silver money (4). In fact, the adulteration practised in those baronial mints had reduced their pretended silver to a sort of black metal, as it was called, (moneta nigra,) into which little entered but copper. Silver, however, and even gold were coined by the dukes of Britany so long as that fief continued to exist. No subject ever enjoyed the right of coining silver in England without the royal stamp and superintendence (5); a remarkable proof of the restraint in which the feudal aristocracy was always held in this country.

yet few or none are preserved of the second or third, before the reign of Philip the Fair. Du Cange, v. Moneta.

(1) Vaissette, Hist. de Languedoc, t. ii. p. 110. Rec. des Historiens, t. xi. préf., p. 180. Du Cange, v. Moneta.

(2) Le Blanc, Traité des Monnoyes, p. 91.

(3) Du Cange, voc. Moneta. Velly, Hist. de France, t. ii. p. 93. Villaret, t. xiv. p. 200.

(4) Du Cange, v. Moneta. The right of debasing the coin was also claimed by this prince as a choice flower of his crown. Item, abaisser et amenuser la monnoye, est privilege especial au roy de son droit royal, si que a luy appartient, et non a autre, et encore en un seul cas, c'est a scavoir en necessité, et lors ne vient pas le ganeg ne convertit en son profit especial, mais en profit, et en la defence du commun. This was in a process commenced by the king's procureur general against the comte de Nevers, for defacing his coin. Le Blanc, Traité des Monnoyes, p. 92. In many places the lord took a sum from his tenants every three years, under the name of monetagium or focagium, in lieu of debasing his money. This was finally abolished in 1380. Du Cange, v. Monetagium.

(5) I do not extend this to the *fact;* for in the anarchy of Stephen's reign, both bishops and barons coined money for themselves. Hoveden, p. 490.

Right of private war.

II. The passion of revenge, always among the most ungovernable in human nature, acts with such violence upon barbarians, that it is utterly beyond the controul of their imperfect arrangements of polity. It seems to them no part of the social compact, to sacrifice the privilege which nature has placed in the arm of valour. Gradually, however, these fiercer feelings are blunted, and another passion, hardly less powerful than resentment, is brought to play in a contrary direction. The earlier object accordingly of jurisprudence is to establish a fixed atonement for injuries, as much for the preservation of tranquillity as the prevention of crime. Such were the weregilds of the barbaric codes, which for a different purpose I have already mentioned (1). But whether it were that the kindred did not always accept, or the criminal offer, the legal composition, or that other causes of quarrel occurred, private feuds (faida) were perpetually breaking out, and many of Charlemagne's capitularies are directed against them. After his time, all hope of restraining so inveterate a practice was at an end; and every man who owned a castle to shelter him in case of defeat, and a sufficient number of dependents to take the field, was at liberty to retaliate upon his neighbours whenever he thought himself injured. It must be kept in mind, that there was, frequently, either no jurisdiction to which he could appeal, or no power to inforce its awards; so that we may consider the higher nobility of France as in a state of nature with respect to each other, and entitled to avail themselves of all legitimate grounds of hostility. The right of waging private war was moderated by Louis IX., checked by Philip IV., suppressed by Charles VI., but a few vestiges of its practice may be found still later (2).

Immunity from taxation. Revenues of kings of France.

III. In the modern condition of governments, taxation is a chief engine of the well-compacted machinery which regulates the system. The payments, the prohibitions, the licences, the watchfulness of collection, the evasions of fraud, the penalties and forfeitures, that attend a fiscal code of laws, present continually to the mind of the most remote and humble individual, the notion of a supreme, vigilant, and coercive authority. But the early European kingdoms knew neither the necessities nor the ingenuity of modern finance. From their de-

(1) The antiquity of compositions for murder is illustrated by Iliad, Σ. 498., where, in the description of the shield of Achilles, two disputants are represented wrangling ἐν ῥ ὁ the judge, for the weregild, or price of blood; ἐνεκα ποινης ανδρος ἀποφθιμενου.

(2) The subject of private warfare is treated so exactly and perspicuously by Robertson, that I should only waste the reader's time by dwelling so long upon it as its extent and importance would otherwise demand. See Hist. of Charles V. vol. i. note 21. Few leading passages in the monuments of the middle ages, relative to this subject, have escaped the penetrating eye of that historian; and they are arranged so well as to form a comprehensive treatise in small compass. I know not that I could add any much worthy of notice, unless it be the following. In the treaty between Philip Augustus and Richard Cœur de Lion (1194), the latter refused to admit the insertion of an article, that none of the barons of either party should molest the other; lest he should infringe the customs of Poitou and his other dominions, in quibus consuetum erat ab antiquo, ut magnates causas proprias invicem gladiis allegarent. Hoveden, p. 741. (in Saville, Script. Anglic.)

mesne lands, the kings of France and Lombardy supplied the common expenses of a barbarous court. Even Charlemagne regulated the economy of his farms with the minuteness of a steward, and a large proportion of his capitularies are directed to this object. Their actual revenue was chiefly derived from free gifts made, according to an ancient German custom, at the annual assemblies (1) of the nation, from amercements paid by alodial proprietors for default of military service, and from the freda, or fines accruing to the judge out of compositions for murder (2). These amounted to one third of the whole weregild; one third of this was paid over by the count to the royal exchequer. After the feudal government prevailed in France, and neither the heribannum nor the weregild continued in use, there seems to have been hardly any source of regular revenue besides the domanial estates of the crown: unless we may reckon as such, that during a journey, the king had a prescriptive right to be supplied with necessaries by the towns and abbeys through which he passed; commuted sometimes into petty regular payments, called droits de giste et de chevauché (3). Hugh Capet was nearly indigent as king of France; though, as count of Paris and Orleans, he might take the feudal aids and reliefs of his vassals. Several other small emoluments of himself and his successors, whatever they may since have been considered, were in that age rather seigniorial than royal. The rights of toll, of customs, of alienage (aubaine), generally even the regale, or enjoyment of the temporalities of vacant episcopal sees and other ecclesiastical benefices (4), were possessed within their own domains by the great feudatories of the crown. They, I apprehend, contributed nothing to their sovereign; not even those aids which the feudal customs enjoined (5).

Exactions from the Jews.

The history of the royal revenue in France is, however, too important to be slightly passed over. As the necessities of government increased, partly through the love of magnificence and pageantry, introduced by the crusades and the temper of chivalry, partly in consequence of employing hired troops instead of the feudal militia, it became impossible to defray its expenses by the ordinary means. Several devices, therefore, were tried, in order to replenish the exchequer. One of these was by extorting money from the Jews. It is almost incredible to what a length this was carried. Usury, forbidden by law and superstition

(1) Du Cange, Dissertation quatrième sur Joinville.

(2) Mably, l. i. c. 2. note 3. Du Cange, voc. Heribannum, Fredum.

(3) Velly, t. ii. p. 329. Villaret, t. xiv. p. 174—195. Recueil des Historiens, t. xiv. préface, p. 87. The last is a perspicuous account of the royal revenue in the twelfth century. But far the most luminous view of that subject, for the three next ages, is displayed by M. de Pastoret, in his prefaces to the fifteenth and sixteenth volumes of the Ordonnances des Rois.

(4) The duke of Burgundy and count of Champagne did not possess the regale. But it was enjoyed by all the other peers; by the dukes of Normandy, Guienne, and Britany; the counts of Toulouse, Poitou, and Flanders. Mably, l. iii. c. 4. Recueil des Historiens, t. ii. p. 229. and t. xiv. p. 53. Ordonnances des Rois, t. i. p. 621.

(5) I have never met with any instance of a relief, aid, or other feudal contribution paid by the vassals of the French crown; but in this negative proposition it is possible that I may be deceived.

to Christians, was confined to this industrious and covetous people (1). It is now no secret, that all regulations interfering with the interest of money render its terms more rigorous and burthensome. The children of Israel grew rich in despite of insult and oppression, and retaliated upon their Christian debtors. If an historian of Philip Augustus may be believed, they possessed almost one half of Paris. Unquestionably they must have had support both at the court and in the halls of justice. The policy of the kings of France was to employ them as a spunge to suck their subjects' money, which they might afterwards express with less odium than direct taxation would incur. Philip Augustus released all Christians in his dominions from their debts to the Jews, reserving a fifth part to himself (2). He afterwards expelled the whole nation from France. But they appear to have returned again; whether by stealth, or, as is more probable, by purchasing permission. St. Louis twice banished, and twice recalled the Jews. A series of alternate persecution and tolerance was borne by this extraordinary people with an invincible perseverance, and a talent of accumulating riches which kept pace with their plunderers; till new schemes of finance supplying the turn, they were finally expelled under Charles VI., and never afterwards obtained any legal establishment in France (3).

Debasement of the coin.

A much more extensive plan of rapine was carried on by lowering the standard of coin. Originally the pound, a money of account, was equivalent to twenty ounces of silver; and divided into twenty pieces of coin (sous), each equal consequently to nearly three shillings and four pence of our new English money (4). At the revolution, the money of France had been depreciated in the proportion of seventy-three to one, and the sol was about equal to an English halfpenny. This was the effect of a long continuance of fraudulent and arbitrary government. The abuse began under Philip I. in 1103, who alloyed his silver coin with a third of copper. So good an example was not lost upon subsequent princes; till under St. Louis, the mark-weight of silver, or eight ounces, was equivalent to fifty sous of the debased coin. Nevertheless these changes seem hitherto to have produced no discontent; whether it were that a people, neither commercial nor enlightened, did not readily perceive their tendency; or, as has been ingeniously conjectured, that these successive diminutions of the standard were nearly counterbalanced by an augmentation in the value of silver, occasioned by the drain of money during the crusades, with which they were about contemporaneous (5). But the rapacity of Philip

(1) The Jews were celebrated for usury as early as the sixth century. Greg. Turon. l. iv. c. 12. and l. vii. c. 23.

(2) Rigord, in Du Chesne, Hist. Franc. Script. t. iii. p. 8.

(3) Villaret, t. ix. p. 433. Metz contained, and I suppose still contains, a great many Jews; but Metz was not part of the ancient kingdom.

(4) Besides this silver coin, there was a golden sol, worth forty pence. Le Blanc thinks the solidi of the Salic law and capitularies mean the latter piece of money. The denarius, or penny, was worth two sous six deniers of modern French coin.

(5) Villaret, t. xiv. p. 198. The price of commodities, he asserts, did not rise till the time of St.

the Fair kept no measures with the public; and the mark in his reign had become equal to eight livres, or a hundred and sixty sous of money. Dissatisfaction, and even tumults, arose in consequence, and he was compelled to restore the coin to its standard under St. Louis (1). His successors practised the same arts of enriching their treasury; under Philip of Valois, the mark was again worth eight livres. But the film had now dropt from the eyes of the people, and these adulterations of money, rendered more vexatious by continued recoinages of the current pieces, upon which a fee was extorted by the moneyers, shewed in their true light as mingled fraud and robbery (2).

Direct taxation.

These resources of government, however, by no means superseded the necessity of more direct taxation. The kings of France exacted money from the roturiers, and particularly the inhabitants of towns, within their domains. In this they only acted as proprietors, or suzerains; and the barons took the same course in their own lands. Philip Augustus first ventured upon a stretch of prerogative, which, in the words of his biographer, disturbed all France. He deprived by force, says Rigord, both his own vassals, who had been accustomed to boast of their immunities, and their feudal tenants, of a third part of their goods (3). Such arbitrary taxation of the nobility, who deemed that their military service discharged them from all pecuniary burthens, France was far too aristocratical a country to bear. It seems not to have been repeated; and his successors generally pursued more legitimate courses. Upon obtaining any contribution, it was usual to grant letters patent, declaring that it had been freely given, and should not be turned into precedent in time to come. Several of these letters patent of Philip the Fair are extant, and published in the general collection of ordinances (4). But in the reign of this monarch, a great innovation took place in the French constitution, which, though it principally affected the method of levying money,

Louis. If this be said on good authority, it is a remarkable fact; but in England we know very little of prices before that period, and I doubt if their history has been better traced in France.

(1) It is curious, and not perhaps unimportant, to learn the course pursued in adjusting payments upon the restoration of good coin, which happened pretty frequently in the fourteenth century, when the States General, or popular clamour, forced the court to retract its fraudulent policy. Le Blanc has published several ordinances nearly to the same effect. One of Charles VI. explains the method adopted rather more fully than the rest. All debts incurred since the depreciated coin began to circulate were to be paid in that coin, or according to its value. Those incurred previously to its commencement were to be paid according to the value of the money circulating at the time of the contract. Item, que tous les vrais emprunts faits en deniers sans fraude, se payeront en telle monnoye comme l'on aura emprunté, si elle a plein cours au temps du payement, et sinon, ils payeront en monnoye coursable lors selon la valeur et le prix du marc d'or ou d'argent. p. 32.

(2) Continuator Gul. de Nangis in Spicilegio, t. iii. For the successive changes in the value of French coins, the reader may consult Le Blanc's treatise, or the Ordonnances des Rois; or he may find a summary view of them in Du Cange, v. Moneta. The bad consequences of these innovations are well treated by M. de Pastoret, in his elaborate preface to the sixteenth volume of the Ordonnances des Rois, p. 40.

(3) Du Chesne, t. v. p. 43.

(4) Fasons scavoir et recognoissons que la derniere subvention que ils nous ont faite (les barons, vassaux et nobles d'Auvergne) de pure grace sans ce que ils y fussent tenus que de grace; et voulons et leur octroyons que les autres subventions que ils nous ont faites ne leur facent nul prejudice, es choses esquelles ils n'étoient tenus, ne par ce nul nouveau droit ne nous soit acquis ne amenuisié. Ordonnance de 1304. apud Mably, l. iv. c. 3. note 5. See other authorities in the same place.

may seem to fall more naturally under the next head of consideration.

Want of supreme legislative authority.

IV. There is no part of the French feudal policy so remarkable as the entire absence of all supreme legislation. We find it difficult to conceive the existence of a political society, nominally one kingdom, and under one head, in which, for more than three hundred years, there was wanting the most essential attribute of government. It will be requisite, however, to take this up a little higher, and inquire what was the original legislature of the French monarchy.

Original legislative assemblies of France.

Arbitrary rule, at least in theory, was uncongenial to the character of the northern nations. Neither the power of making laws, nor that of applying them to the circumstances of particular cases, were left at the discretion of the sovereign. The Lombard kings held assemblies every year at Pavia, where the chief officers of the crown and proprietors of lands deliberated upon all legislative measures, in the presence and, nominally at least, with the consent of the multitude (1). Frequent mention is made of similar public meetings in France by the historians of the Merovingian kings, and still more unequivocally by their statutes (2). These assemblies have been called parliaments of the Champ de Mars, having originally been held in the month of March. We know very little of their constituent members; but it is probable that every alodial proprietor had a legal right to assist in their deliberations; and at least equally so, that the efficient power was nearly confined to the leading aristocracy. Such, indeed, is the impression conveyed by a remarkable passage of Hincmar, archbishop of Rheims, during the time of Charles the Bald, who has preserved, on the authority of a writer contemporary with Charlemagne, a sketch of the Frankish government under that great prince. Two assemblies (placita) were annually held.

Assemblies held by Charlemagne.

In the first, all regulations of importance to the public weal for the ensuing year were enacted; and to this, he says, the whole body of clergy and laity repaired; the greater, to deliberate upon what was fitting to be done; and the less, to confirm by their voluntary assent, not through deference to power, or sometimes even to discuss, the resolutions of their superiors (3). In the second

(1) Luitprand, king of the Lombards, says that his laws sibi placuisse unà cum omnibus judicibus de Austriæ et Neustriæ partibus, et de Tusciæ finibus, cum reliquis fidelibus meis Langobardis, et omni populo assistente. Muratori, Dissertatio, 22.

(2) Mably, l. i. c. 1. note 1. Lindebrog. Codex Legum Antiquarum, p. 363. 369. The following passage, quoted by Mably, (c. ii. n. 6.) from the preamble of the revised Salic law under Clotaire II., is explicit. Temporibus Clotairii regis unà cum principibus suis, id est 33 episcopis et 34 ducibus et 79 comitibus, *vel* cætero populo constituta est. A remarkable instance of the use of *vel* instead of *et*, which was not uncommon, and is noticed by Du Cange, under the word Vel. Another proof of it occurs in the very next quotation of Mably from the edict of 615, cum pontificibus, *vel* cum magnis viris optimatibus.

(3) Consuetudo tunc temporis talis erat, ut non sæpius, sed bis in anno placita duo tenerentur. Unum, quando ordinabatur status totius regni ad anni vertentis spatium; quod ordinatum nullus eventus rerum, nisi summa necessitas, quæ similiter toti regno incumbebat, mutabat. In quo placito generalitas universorum majorum, tam clericorum quam laicorum, conveniebat; seniores, propter consilium ordinandum; minores, propter idem consilium suspiciendum, et interdum pariter tractandum, et non ex potestate sed ex proprio mentis intellectu vel sententiâ, confirmandum. Hincmar, Epist. 5. de ordine palatii. I have not translated the word majorum in the above quotation, not apprehending its sense.

annual assembly, the chief men and officers of state were alone admitted, to consult upon the most urgent affairs of government. They debated, in each of these, upon certain capitularies, or short proposals, laid before them by the king. The clergy and nobles met in separate chambers, though sometimes united for the purposes of deliberation. In these assemblies, principally, I presume, in the more numerous of the two annually summoned, that extensive body of laws, the capitularies of Charlemagne, were enacted. And though it would contradict the testimony just adduced from Hincmar, to suppose that the lesser freeholders took a very effective share in public counsels, yet their presence, and the usage of requiring their assent, indicate the liberal principles upon which the system of Charlemagne was founded. It is continually expressed in his capitularies, and those of his family, that they were enacted by general consent (1). In one of Louis the Debonair, we even trace the first germ of representative legislation. Every count is directed to bring with him to the general assembly twelve Scabini, if there should be so many in his county; or, if not, should fill up the number out of the most respectable persons resident. These Scabini were judicial assessors of the count, chosen by the alodial proprietors (2).

The circumstances, however, of the French empire for several subsequent ages were exceedingly adverse to such enlarged schemes of polity. The nobles contemned the imbecile descendants of Charlemagne; and the people, or lesser freeholders, if they escaped absolute villenage, lost their immediate relation to the supreme government in the subordination to their lord established by the feudal law. Yet we may trace the shadow of ancient popular rights in one constitutional function of high importance, the choice of a sovereign. Historians who relate the election of an emperor or king of France, seldom omit to specify the consent of the multitude, as well as of the temporal and spiritual aristocracy; and even in solemn instruments that record such transactions, we find a sort of importance attached to the popular suffrage (3). It is surely less

(1) Capitula quæ præterito anno legi Salicæ cum omnium consensu addenda esse censuimus. (A. D. 801.) Ut populus interrogetur de capitulis quæ in lege noviter addita sunt, et postquam omnes consenserint, subscriptiones et manufirmationes suas in ipsis capitulis faciant. (A. D. 813.) Capitularia patris nostri quæ Franci pro lege tenenda judicaverunt. (A. D. 837.) I have borrowed these quotations from Mably, who remarks that the word *populus* is never used in the earlier laws. See too Du Cange, v. Lex, Mallum, Pactum.

(2) Vult dominus imperator ut in tale placitum quale ille nunc jusserit, veniat unusquisque comes, et adducat secum duodecim scabinos si tanti fuerint; sin autem, de melioribus hominibus illius comitatûs suppleat numerum duodenarium. Mably, l. ii. c. ii.

(3) It has been intimated in another place, p. 6. that the French monarchy seems not to have been strictly hereditary under the later kings of the Merovingian race: at least expressions indicating a formal election are frequently employed by historians. Pepin of course came in by the choice of the nation. At his death he requested the consent of the counts and prelates to the succession of his sons; (Baluzii Capitularia, p. 187.) though they had bound themselves by oath, at his consecration, never to elect a king out of another family. Ut nunquam de alterius lumbis regem eligere præsumant. (Formula Consecrationis Pippini in Recueil des Historiens, t. v.) In the instrument of partition by Charlemagne among his descendants, he provides for their immediate succession in absolute terms, without any mention of consent. But in the event of the decease of one of his sons leaving a child, *whom the people shall chuse*, the other princes were to permit him to reign. Baluze, p. 440. This is repeated more perspicuously in the partition

a display of magnificence, and to keep the feudal tenants in good humour; nor is it easy to discover that they passed in any thing but pageantry (1). Some respectable antiquaries have however been of opinion, that affairs of state were occasionally discussed in them; and this is certainly by no means inconsistent with probability, though not sufficiently established by evidence (2).

Excepting a few instances, most of which have been mentioned, it does not appear that the kings of the house of Capet acted according to the advice and deliberation of any national assembly, such as assisted the Norman sovereigns of England; nor was any consent required for the validity of their edicts, except that of the ordinary council, chiefly formed of their household officers and less powerful vassals. This is at first sight very remarkable. For there can be no doubt that the government of Henry I. or Henry II. was incomparably stronger than that of Louis VI. or Louis VII. But this apparent absoluteness of the latter was the result of their real weakness and the disorganization of the monarchy. The peers of France were infrequent in their attendance upon the king's council, because they denied its coercive authority. It was a fundamental principle, that every feudal tenant was so far sovereign within the limits of his fief, that he could not be bound by any law, without his consent. The king, says St. Louis in his Establishments, cannot make proclamation, that is, declare any new law, in the territory of a baron without his consent, nor can the baron do so in that of a vavassor (3). Thus, if legislative power be essential to sovereignty, we cannot in strictness assert the king of France to have been sovereign beyond the extent of his domanial territory. Nothing can more strikingly illustrate the dissimilitude of the French and English constitutions of government, than the sentence above cited from the code of St. Louis.

Limitations of royal power in legislation.

Upon occasions, when the necessity of common deliberation, or of giving to new provisions more extensive scope than the limits of a single fief, was too glaring to be overlooked, congresses of neighbouring lords met in order to agree upon resolutions, which each of them undertook to execute within his own domains. The king was sometimes a contracting party, but without any coercive authority over the rest. Thus we have what is called an ordinance, but, in reality, an agreement, between the king (Philip Augustus), the countess of Troyes or Champagne, and the lord of Dampierre (count of Flanders), relating to the Jews in their domains; which agreement or ordinance, it is said, should endure "until ourselves, and the countess of Troyes, and Guy de Dampierre, who make this contract, shall dissolve it with

Substitutes for legislative authority.

(1) Du Cange, Dissert. 5. sur Joinville.

(2) Mémoires de l'Acad. des inscript. t. xii. Recueil des Hist. t. xi. préface, p. 155.

(3) Ne li Rois ne puet mettre ban en la terre au baron sans son assentment, ne li Bers (Baron) ne puet mettre ban en la terre au vavasor. Ordonnances des Rois, t. i. p. 126.

the consent of such of our barons as we shall summon for that purpose (1)."

Ecclesiastical councils were another substitute for a regular legislature; and this defect in the political constitution rendered their encroachments less obnoxious, and almost unavoidable. That of Troyes in 878, composed perhaps in part of laymen, imposed a fine upon the invaders of church property (2). And the council of Toulouse, in 1229, prohibited the erection of any new fortresses, or the entering into any leagues, except against the enemies of religion; and ordained that judges should administer justice gratuitously, and publish the decrees of the council four times in the year (3).

First measures of general legislation.

The first unequivocal attempt, for it was nothing more, at general legislation, was under Louis VIII. in 1223, in an ordinance, which, like several of that age, relates to the condition and usurious dealings of the Jews. It is declared in the preamble to have been enacted, per assensum archiepiscoporum, episcoporum, comitum, baronum, et militum regni Franciæ, qui Judæos habent, et qui Judæos non habent. This recital is probably untrue, and intended to cloak the bold innovation contained in the last clause of the following provision: Sciendum, quod nos et barones nostri statuimus et ordinavimus de statu Judæorum quod nullus nostrûm alterius Judæos recipere potest vel retinere; *et hoc intelligendum est tam de his qui stabilimentum juraverint, quam de illis qui non juraverint* (4). This was renewed with some alteration in 1230, de communi consilio baronum nostrorum (5).

But whatever obedience the vassals of the crown might pay to this ordinance, their original exemption from legislative controul remained, as we have seen, unimpaired at the date of the Establishments of St. Louis, about 1269; and their ill-judged confidence in this feudal privilege still led them to absent themselves from the royal council. It seems impossible to doubt that the barons of France might have asserted the same right, which those of England had obtained, that of being duly summoned by special writ, and thus have rendered their consent necessary to every measure of legislation. But the fortunes of France were different. The Establishments of St. Louis are declared to be made "par grand conseil de sages hommes et de bons clers," but no mention is made of any consent given by the barons; nor does it often, if ever, occur in subsequent ordinances of the French kings.

Legislative power of the crown increases.

The nobility did not long continue safe in their immunity from the king's legislative power. In the ensuing reign of Philip the Bold, Beaumanoir lays it down,

(1) Quousque nos, et comitissa Trecensis, et Guido de Domnâ petrâ, qui hoc facimus, per nos, et illos de baronibus nostris, quos ad hoc vocare volumus, illud diffaciamus. Ordonnances des Rois, t. i. p. 39. This ordinance bears no date, but it was probably between 1218 and 1223, the year of Philip's death.

(2) Vaissette, Hist. de Languedoc, t. ii. p. 6.

(3) Velly, t. iv. p. 132.

(4) Ordonnances des Rois, t. i. p. 47.

(5) Idem, p. 53.

though in very moderate and doubtful terms, that "when the king makes any ordinance specially for his own domains, the barons do not cease to act in their territories according to the ancient usage; but, when the ordinance is general, it ought to run through the whole kingdom, and we ought to believe that it is made with good advice, and for the common benefit (1)." In another place he says with more positiveness, that "the king is sovereign above all, and has of right the general custody of the realm, for which cause he may make what ordinances he pleases for the common good, and what he ordains ought to be observed; nor is there any one so great but may be drawn into the king's court for default of right or for false judgment, or in matters that affect the sovereign (2)." These latter words give us a clue to the solution of the problem, by what means an absolute monarchy was established in France. For though the barons would have been little influenced by the authority of a lawyer like Beaumanoir, they were much less able to resist the coercive logic of a judicious tribunal. It was in vain for them to deny the obligation of royal ordinances within their own domains, when they were compelled to acknowledge the jurisdiction of the parliament of Paris, which took a very different view of their privileges. This progress of the royal jurisdiction will fall under the next topic of inquiry, and is only now hinted at, as the probable means of confirming the absolute legislative power of the French crown.

Causes of this.

The ultimate source, however, of this increased authority will be found in the commanding attitude assumed by the kings of France from the reign of Philip Augustus, and particularly in the annexation of the two great fiefs of Normandy and Toulouse. Though the châtelains and vavassors who had depended upon those fiefs before their re-union were, agreeably to the text of St. Louis's ordinance, fully sovereign, in respect of legislation, within their territories, yet they were little competent, and perhaps little disposed, to offer any opposition to the royal edicts; and the same relative superiority of force, which had given the first kings of the house of Capet a tolerably effective controul over the vassals dependent on Paris and Orleans, while they hardly pretended to any over Normandy and Toulouse, was now extended to the greater part of the kingdom. St. Louis, in his scrupulous moderation, forbore to avail himself of all the advantages presented by the circumstances of his reign; and his Establishments bear testimony to a state of political society, which, even at the moment of their promulgation, was passing away. The next thirty years after his death, with no marked crisis, and with little disturbance, silently demolished the feudal system, such as had been established in France during the dark confusion of the tenth century. Philip the Fair, by help of

(1) Coutumes de Beauvoisis, c. 48. (2) C. 34.

his lawyers and his financiers, found himself, at the beginning of the fourteenth century, the real master of his subjects.

Convocation of the States General by Philip the Fair.

There was however one essential privilege which he could not hope to overturn by force, the immunity from taxation enjoyed by his barons. This, it will be remembered, embraced the whole extent of their fiefs, and their tenantry of every description; the king having no more right to impose a tallage upon the demesne towns of his vassals, than upon themselves. Thus his resources, in point of taxation, were limited to his own domains; including certainly, under Philip the Fair, many of the noblest cities in France, but by no means sufficient to meet his increasing necessities. We have seen already the expedients employed by this rapacious monarch; a shameless depreciation of the coin, and, what was much more justifiable, the levying taxes within the territories of his vassals by their consent. Of these measures, the first was odious, the second slow and imperfect. Confiding in his sovereign authority, though recently, yet almost completely established, and little apprehensive of the feudal principles, already grown obsolete and discountenanced, he was bold enough to make an extraordinary innovation in the French constitution. This was the convocation of the States General, a representative body, composed of the three orders of the nation (1).

(1) It is almost unanimously agreed among French writers, that Philip the Fair first introduced a representation of the towns into his national assembly of States General. Nevertheless, the Chronicles of St. Denis, and other historians of rather a late date, assert that the deputies of towns were present at a parliament in 1251, to advise the king what should be done in consequence of the count of Angoulême's refusal of homage. Boulainvilliers, Hist. de l'Ancien Gouvernement de France, t. ii. p. 20. Villaret, t. ix. p. 123. The latter pretends even that they may be traced a century farther back: on voit déjà les gens de bonnes villes assister aux états de 1155. Ibid. But he quotes no authority for this; and his vague language does not justify us in supposing, that any representation of the three estates, properly so understood, did, or indeed could, take place in 1155, while the power of the aristocracy was unbroken, and very few towns had been incorporated. If it be true that the deputies of some royal towns were summoned to the parliament of 1251, the conclusion must not be inferred, that they possessed any consenting voice, nor perhaps that they formed, strictly speaking, an integrant portion of the assembly. There is reason to believe, that deputies from the royal burghs of Scotland occasionally appeared at the bar of parliament, long before they had any deliberative voice. Pinkerton's Hist. of Scotland, vol. i. p. 371.

An ordinance of St. Louis, quoted in a very respectable book, Vaissette's History of Languedoc, t. iii. p. 480., but not published in the Recueil des Ordonnances, not only shews the existence, in one instance, of a *provincial* legislative assembly, but is the earliest proof perhaps of the tiers état appearing as a constituent part of it. This relates to the seneschaussée, or county, of Beaucaire in Languedoc, and bears date in 1254. It provides, that if the seneschal shall think fit to prohibit the export of merchandize, he shall summon some of the prelates, barons, knights, and inhabitants of the chief towns, by whose advice he shall issue such prohibition, and not recall it, when made, without like advice. But though it is interesting to see the progressive importance of the citizens of towns, yet this temporary and insulated ordinance is not of itself sufficient to establish a constitutional right. Neither do we find therein any evidence of representation; it rather appears that the persons assisting in this assembly were *notables*, selected by the seneschal.

I am not aware of any instance of regular provincial estates being summoned with such full powers, although it was very common in the fourteenth century to ask their consent to grants of money, when the court was unwilling to convoke the States General. Yet there is a passage in a book of considerable credit, the Grand Customary, or Somme rurale of Bouteiller, which seems to render general the particular case of the seneschaussée of Beaucaire. Bouteiller wrote about the end of the fourteenth century. The great courts summoned from time to time by the bailiffs and seneschals were called assises. Their usual function was to administer justice, especially by way of appeal, and perhaps to redress abuses of inferior officers. But he seems to give them a more extended authority. En assise, he says, appelés les sages et seigneurs du pais, peuvent estre mises sus nouvelles constitutions, et ordonnances sur le pais, et destruites autres que seront grevables, *et un autre temps non*, et doivent être publiées afin que nul ne les pueust ignorer, et lors ne les peut ne doit jamais nul redarguer.—Mém. de l'Acad. des Inscriptions, t. xxx. p. 606.

The taille was assessed by respectable persons chosen by the advice of the parish priests and

They were first convened in 1302, in order to give more weight to the king's cause, in his great quarrel with Boniface VIII.; but their earliest grant of a subsidy is in 1314. Thus the nobility surrendered to the crown their last privilege of territorial independence; and having first submitted to its appellant jurisdiction over their tribunals, next to its legislative supremacy, now suffering their own dependents to become, as it were, immediate, and a Third Estate to rise up almost co-ordinate with themselves, endowed with new franchises, and bearing a new relation to the monarchy.

It is impossible not to perceive the motives of Philip in embodying the deputies of towns, as a separate estate in the national representation. He might, no question, have convoked a parliament of his barons, and obtained a pecuniary contribution which they would have levied upon their burgesses and other tenants. But besides the ulterior policy of diminishing the controul of the barons over their dependents, he had good reason to expect more liberal aid from the immediate representatives of the people, than through the concession of a dissatisfied aristocracy. He must be blind indeed, says Pasquier, who does not see that the roturier was expressly summoned to this assembly, contrary to the ancient institutions of France, for no other reason, than that, inasmuch as the burthen was intended to fall principally upon him, he might engage himself so far by promise, that he could not afterwards murmur or become refractory (1). Nor would I deny the influence of more generous principles; the example of neighbouring countries, the respect due to the progressive civilization and opulence of the towns, and the application of that ancient maxim of the northern monarchies, that whoever was elevated to the perfect dignity of a freeman acquired a claim to participate in the imposition of public tributes.

Rights of the States General as to taxation.

It is very difficult to ascertain the constitutional rights of the States General, claimed or admitted, during forty years after their first convocation. If indeed we could implicitly confide in an historian of the sixteenth century, who asserts that Louis Hutin bound himself and his successors not to levy any tax without the consent of the three estates, the problem would find its solution (2). This ample charter does not appear in the French archives; and though by no means to be rejected on that account, when we consider the strong motives for its destruction, cannot fairly be adduced as an authentic fact. Nor can we altogether infer, perhaps, from the collection of ordinances, that the crown had ever intentionally divested itself of the right to impose

others, which gave the people a sort of share in the *repartition*, to use a French term, of public burthens; a matter of no small importance, where a tax is levied on visible property. Ordonnances des Rois, p. 291. Beaumanoir, p. 269. This, however, continued, I believe, to be the practice in later times; I know it is so in the present system of France; and is perfectly distinguishable from a popular consent to taxation.

(1) Recherches de la France, l. ii. c. 7.

(2) Boulainvilliers (Hist. de l'Anc. Gouvernement. t. ii. p. 128.) refers for this to Nicholas Gilles, a chronicler of no great repute.

tallages on its domanial tenants. All others, however, were certainly exempted from that prerogative; and there seems to have been a general sentiment, that no tax whatever could be levied without free consent of the estates (1). Louis Hutin, in a charter granted to the nobles and burgesses of Picardy, promises to abolish the unjust taxes (maltotes) imposed by his father (2); and in another instrument, called the charter of Normandy, declares that he renounces for himself and his successors all undue tallages and exactions, except in case of evident utility (3). This exception is doubtless of perilous ambiguity; yet as the charter was literally wrested from the king by an insurrectionary league, it might be expected that the same spirit would rebel against his royal interpretation of state-necessity. His successor, Philip the Long, tried the experiment of a gabelle, or excise upon salt. But it produced so much discontent, that he was compelled to assemble the States-General, and to publish an ordinance declaring that the impost was not designed to be perpetual, and that, if a sufficient supply for the existing war could be found elsewhere, it should instantly determine (4). Whether this was done, I do not discover; nor do I conceive, that any of the sons of Philip the Fair, inheriting much of his rapacity and ambition, abstained from extorting money without consent. Philip of Valois renewed and augmented the duties on salt by his own prerogative, nor had the abuse of debasing the current coin been ever carried to such a height as during his reign, and the first years of his successor. These exactions, aggravated by the smart of a hostile invasion, produced a very remarkable concussion in the government of France.

States general of 1355 and 1356.

I have been obliged to advert, in another place, to the memorable resistance made by the Estates General of 1355 and 1356 to the royal authority, on account of its inseparable connection with the civil history of France (5). In the present chapter, the assumption of political influence by those assemblies deserves particular notice. Not that they pretended to restore the ancient constitution of the northern nations, still flourishing in Spain and England, the participation of legislative power with the crown. Five hundred years of anarchy and ignorance had swept away all remembrance of those general diets, in which the capitularies of the Carlovingian dynasty had been established by common consent. Charlemagne himself was hardly known to the French of the fourteenth century, except as the hero of some silly romance or ballad. The States General remonstrated, indeed, against abuses, and especially the most flagrant of all, the adulteration of money;

(1) Mably, Observat. sur l'Hist. de France, l. v. c. 1., is positive against the right of Philip the Fair and his successors to impose taxes. Montlosier (Monarchie Française, t. i. p. 202.) is of the same opinion. In fact, there is reason to believe, that the kings in general did not claim that prerogative absolutely, whatever pretexts they might set up for occasional stretches of power.

(2) Ordonnances des Rois, t. i. p. 566.

(3) Idem, t. i. p. 589.

(4) Idem, t. i. p. 679.

(5) Chap. i. p. 38.

but the ordinance granting redress emanated altogether from the king, and without the least reference to their consent, which sometimes appears to be studiously omitted (1). But the privilege upon which the States under John solely relied for securing the redress of grievances, was that of granting money, and of regulating its collection. The latter, indeed, though for convenience it may be devolved upon the executive government, appears to be incident to every assembly in which the right of taxation resides. That, accordingly, which met in 1355 nominated a committee chosen out of the three orders, which was to sit after their separation, and which the king bound himself to consult, not only as to the internal arrangements of his administration, but upon every proposition of peace or armistice with England. Deputies were dispatched into each district, to superintend the collection, and receive the produce of the subsidy granted by the States (2). These assumptions of power would not long, we may be certain, have left the sole authority of legislation in the king, and might perhaps be censured as usurpation, if the peculiar emergency in which France was then placed did not furnish their defence. But, if it be true that the kingdom was reduced to the utmost danger and exhaustion, as much by malversation of its government, as by the armies of Edward III., who shall deny to its representatives the rights of ultimate sovereignty, and of suspending at least the royal prerogatives, by the abuse of which they were falling into destruction (3)? I confess that it is exceedingly difficult, or perhaps impracticable, with such information as we possess, to decide upon the motives and conduct of the States General, in their several meetings before and after the battle of Poitiers. Arbitrary power prevailed; and its opponents became, of course, the theme of obloquy with modern historians. Froissart, however, does not seem to impute any fault to these famous assemblies of the States General; and still less a more contemporary historian, the anonymous continuator of Nangis. Their notices, however, are very slight; and our chief knowledge of the parliamentary history of France, if I may employ the expression, must be collected from the royal ordinances made upon these occasions, or from unpublished accounts of their transactions. Some of these, which are quoted by the later French historians,

(1) The proceedings of States General held under Philip IV. and his sons have left no trace in the French statute-book. Two ordinances alone, out of some hundred enacted by Philip of Valois, appear to have been founded upon their suggestions.

It is absolutely certain, that the States General of France had at no period, and in no instance, a co-ordinate legislative authority with the crown, or even a consenting voice. Mably, Boulainvilliers, and Montlosier, are as decisive on this subject as the most courtly writers of that country. It follows as a just consequence, that France never possessed a free constitution; nor had the monarchy any limitations in respect of enacting laws, save those which, until the reign of Philip the Fair, the feudal principles had imposed.

(2) Ordonnances des Rois, t. iii. p. 21., and préface, p. 32. This preface by M. Sécousse, the editor, gives a very clear view of the general and provincial assemblies held in the reign of John. Boulainvilliers, Hist. de l'Ancien Gouvernement de France, t. ii., or Villaret, t. ix., may be perused with advantage.

(3) The second continuator of Nangis in the Spicilegium dwells on the heavy taxes, diminution of money, and general oppressiveness of government in this age, t iii. p. 108.

are of course inaccessible to a writer in this country. But a manuscript in the British Museum, containing the early proceedings of that assembly which met in October, 1356, immediately after the battle of Poitiers, by no means leads to an unfavourable estimate of its intentions (1). The tone of their representations to the duke of Normandy (Charles V., not then called Dauphin) is full of loyal respect; their complaints of bad administration, though bold and pointed, not outrageous; their offers of subsidy liberal. The necessity of restoring the coin is strongly represented, as the grand condition upon which they consented to tax the people, who had been long defrauded by the base money of Philip the Fair and his successors (2).

Troubles at Paris. 1357

But whatever opportunity might now be afforded for establishing a just and free constitution in France was entirely lost. Charles, inexperienced and surrounded by evil counsellors, thought the States General inclined to encroach upon his rights, of which, in the best part of his life, he was always abundantly careful. He dismissed therefore the assembly, and had recourse to the easy but ruinous expedient of debasing the coin. This led to seditions at Paris, by which his authority and even his life were endangered. In February, 1357, three months after the last meeting had been dissolved, he was obliged to convoke the States again, and to enact an ordinance conformable to the petitions tendered by the former assembly (3). This contained many excellent provisions, both for the redress of abuses, and the vigorous prosecution of the war against Edward; and it is difficult to conceive, that men who advised measures so conducive to the public weal could have been the blind instruments of the king of Navarre. But this, as I have already observed, is a problem in history that we cannot hope to resolve. It appears, however, that in a few weeks

(1) Cotton MSS. Titus, t. xii. fol. 58—74. This manuscript is noticed, as an important document, in the preface to the third volume of Ordonnances, p. 48., by M. Sécousse, who had found it mentioned in the Bibliothèque Historique of Le Long, No. 11242. No French antiquary appears, at least before that time, to have seen it; but Boulainvilliers conjectured that it related to the assembly of States in February 1356 (1357), and M. Sécousse supposed it rather to be the original journal of the preceding meeting in October 1356, from which a copy, found among the manuscripts of Dupuy, and frequently referred to by Sécousse himself in his preface, had been taken. M. Sécousse was perfectly right in supposing the manuscript in question to relate to the proceedings of October, and not of February; but it is not an original instrument. It forms part of a small volume written on vellum and containing several other treatises. It seems, however, as far as I can judge, to be another copy of the account which Dupuy possessed, and which Sécousse so often quotes, under the name of Procès-verbal.

(2) Et estoit et est l'entente de ceulx qui a la dite convocation estoient que quelconque ottroy ou ayde qu'ils feissent, ils eussent bonne monnoye et estable selon l'advis des trois estats—et que les chartres et lettres faites pour les reformations du royaume par le roy Philippe le Bel, et toutes celles qui furent faites par le roy notre seigneur qui est a present fussent confirmées, enterinées, tenues et gardées de point en point; et toutes les aides quelconques qui faites soient fussent reçues et distribuées par ceulx qui soient a ce comm's par les trois estats, et autorisées par M. le Duc, et sur certaines autres conditions et modifications justes et raissonables et prouffitables, et semble que ceste aide eust été moult grant et moult prouffitable, et trop plus que aides de fait de monnoye. Car elle se feroit de volonté du peuple et consentement commun selon Dieu et selon conscience : Et le prouffit que on prent et veult on prendre sur le fait de la monnoye duquel on veult faire le fait de la guerre, et ce soit a la destruction et a esté au temps passé du roy et du royaume et des subjets; Et si se destruit le billon tant par fontures et blanchis comme autrement, ne le fait ne peust durer longuement qu'il ne vienne a destruction si on continue longuement; Et si est tout certain que les gens d'armes ne vouldroient estre contens de leurs gaiges par foible monnoye, etc.

(3) Ordonnances des Rois, t. iii. p. 121.

after the promulgation of this ordinance, the proceedings of the reformers fell into discredit, and their commission of thirty-six, to whom the collection of the new subsidy, the redress of grievances, and, in fact, the whole administration of government had been entrusted, became unpopular. The subsidy produced much less than they had led the people to expect; briefly, the usual consequence of democratical emotions in a monarchy took place. Disappointed by the failure of hopes unreasonably entertained, and improvidently encouraged, and disgusted by the excesses of the violent demagogues, the nation, especially its privileged classes, who seem to have concurred in the original proceedings of the States General, attached themselves to the party of Charles, and enabled him to quell opposition by force (1). Marcel, provost of the traders, a municipal magistrate of Paris, detected in the overt execution of a traitorous conspiracy with the king of Navarre, was put to death by a private hand. Whatever there had been of real patriotism in the States General, artfully confounded, according to the practice of courts, with these schemes of disaffected men, shared in the common obloquy; whatever substantial reforms had been projected, the government threw aside as seditious innovations. Charles, who had assumed the title of regent, found in the States General assembled at Paris in 1359 a very different disposition from that which their predecessors had displayed, and publicly restored all counsellors, whom in the former troubles he had been compelled to discard. Thus the monarchy resettled itself on its ancient basis: or, more properly, acquired additional stability (2).

Taxes imposed by John and Charles V.

Remedial ordinance of Charles VI. 1380.

Both John, after the peace of Bretigni, and Charles V. imposed taxes without consent of the States General (3). The latter indeed hardly ever convoked that assembly. Upon his death the contention between the crown and representative body was renewed, and in the first meeting held after the accession of Charles VI. the government was compelled to revoke all taxes illegally imposed since the reign of Philip IV. This is the most remedial ordinance, perhaps, in the history of French legislation. "We will, ordain, and grant," says the king, "that the aids, subsidies and impositions of whatever kind, and however imposed, that have had course in the realm since the reign of our predecessor Philip the Fair, shall be repealed and abolished; and we will and decree, that by the course which the said impositions have had, we or our successors shall not have acquired any right, no shall any prejudice be wrought to our people, nor to

(1) Discordiâ motâ, illi tres status ab incepto proposito cessaverunt. Ex tunc enim regni negotia male ire, etc. Continuator Gul. de Nangis in Spicilegio, t. iii. p. 115.

(2) A very full account of these transactions is given by Sécousse, in his History of Charles the Bad, p. 107., and in his preface to the third volume of the Ordonnances des Rois. The reader must make allowance for the usual partialities of a French historian, where an opposition to the reigning prince is his subject. A contrary bias is manifested by Boulainvilliers and Mably, whom however it is well worth while to hear.

(3) Mably, l. v, c. 5. note 8.

their privileges and liberties, which shall be re-established in as full a manner as they enjoyed them in the reign of Philip the Fair, or at any time since; and we will and decree, that if any thing has been done contrary to them since that time to the present hour, neither we nor our successors shall take any advantage therefrom (1)." If circumstances had turned out favourably for the cause of liberty, this ordinance might have been the basis of a free constitution, in respect at least of immunity from arbitrary taxation. But the coercive measures of the court and tumultuous spirit of the Parisians produced an open quarrel, in which the popular party met with a decisive failure.

It seems indeed impossible, that a number of deputies elected merely for the purpose of granting money can possess that weight, or be invested in the eyes of their constituents with that awfulness of station, which is required to withstand the royal authority. The States General had no right of redressing abuses, except by petition; no share in the exercise of sovereignty, which is inseparable from the legislative power. Hence, even in their proper department of imposing taxes, they were supposed incapable of binding their constituents without their specific assent. Whether it were the timidity of the deputies, or false notions of freedom, which produced this doctrine, it was evidently repugnant to the stability and dignity of a representative assembly. Nor was it less ruinous in practice than mistaken in theory. For as the necessary subsidies, after being provisionally granted by the States, were often rejected by their electors, the king found a reasonable pretence for dispensing with the concurrence of his subjects, when he levied contributions upon them.

States General under Charles VII.

The States General were convoked but rarely under Charles VI. and VII., both of whom levied money without their concurrence. Yet there are remarkable testimonies under the latter of these princes, that the sanction of national representatives was still esteemed strictly requisite to any ordinance imposing a general tax, however the emergency of circumstances might excuse a more arbitrary procedure. Thus Charles VII., in 1436, declares that he has set up again the aids which had been previously abolished *by the consent of the three estates* (2). And in the important edict establishing the companies of ordonnance, which is recited to be done by the advice and counsel of the States General assembled at Orleans, the forty-first section appears to bear a necessary construction, that no taillage could lawfully be imposed without such consent (3). It is maintained indeed by some writers, that the perpetual taille established about the same time

(1) Ordonnances des Rois, t. vi. p. 364. The ordinance is long, containing frequent repetitions, and a great redundance of words, intended to give more force, or at least solemnity.

(2) Ordonnances des Rois, t. xiii. p. 211.

(3) Ordonnances des Rois, p. 312. Boulainvilliers mentions other instances where the States granted money during this reign, t. iii. p. 70.

was actually granted by these States of 1439, though it does not so appear upon the face of any ordinance (1). And certainly this is consonant to the real and recognized constitution of that age.

Provincial States.

But the crafty advisers of courts in the fifteenth century, enlightened by experience of past dangers, were averse to encountering these great political masses, from which there were, even in peaceful times, some disquieting interferences, some testimonies of public spirit and recollections of liberty to apprehend. The kings of France indeed had a resource, which generally enabled them to avoid a convocation of the States General, without violating the national franchises. From provincial assemblies, composed of the three orders, they usually obtained more money than they could have extracted from the common representatives of the nation, and heard less of remonstrance and demand (2). Languedoc in particular had her own assembly of states, and was rarely called upon to send deputies to the general body, or representatives of what was called the Languedoil. But Auvergne, Normandy, and other provinces belonging to the latter division, had frequent convocations of their respective estates, during the intervals of the States General; intervals, which by this means were protracted far beyond that duration to which the exigencies of the crown would otherwise have confined them (3). This was one of the essential differences between the constitutions of France and England, and arose out of the original disease of the former monarchy, the distraction and want of unity consequent upon the decline of Charlemagne's family, which separated the different provinces in respect of their interests and domestic government from each other.

But the formality of consent, whether by general or provincial states, now ceased to be reckoned indispensable. The lawyers had rarely seconded any efforts to restrain arbitrary power: in their hatred of feudal principles, especially those of territorial jurisdiction, every generous sentiment of freedom was proscribed; or if they admitted that absolute prerogative might require some checks, it was such only as themselves, not the national representatives, should impose. Charles VII. levied money by his own authority. Louis XI. carried this encroachment to the highest pitch of exaction. It was the boast of courtiers, that he first released the kings of France from dependence (hors de page); or, in other words, that he effectually demolished those barriers, which, however imperfect and ill-placed, had imposed some impediment to the establishment of despotism (4).

Taxes of Louis XI.

(1) Bréquigny, préface au treizième tome des Ordonnances. Boulainvilliers, t. iii. p. 108.

(2) Villaret, t. xi. p. 270.

(3) Ordonnances des Rois, t. iii. préface.

(4) The preface to the sixteenth volume of Ordonnances, before quoted, displays a lamentable picture of the internal situation of France in consequence of excessive taxation, and other abuses. These evils, in a less aggravated degree, continued ever since to retard the improvement, and diminish the intrinsic prosperity of a country so extraordinarily endowed with natural advantages.

The exactions of Louis, however, though borne with patience, did not pass for legal with those upon whom they pressed. Men still remembered their ancient privileges, which they might see with mortification well preserved in England. "There is no monarch or lord upon earth, (says Philip de Comines, himself bred in courts,) who can raise a farthing upon his subjects, beyond his own domains, without their free concession, except through tyranny and violence. It may be objected that in some cases there may not be time to assemble them, and that war will bear no delay; but I reply, (he proceeds,) that such haste ought not to be made, and there will be time enough; and I tell you that princes are more powerful, and more dreaded by their enemies, when they undertake any thing with the consent of their subjects (1)."

States General of Tours in 1484.

The States General met but twice during the reign of Louis XI., and on neither occasion for the purpose of granting money. But an assembly in the first year of Charles VIII., the States of Tours in 1484, is too important to be overlooked, as it marks the last struggle of the French nation by its legal representatives for immunity from arbitrary taxation.

A warm contention arose for the regency upon the accession of Charles VIII., between his aunt Anne de Beaujeu, whom the late king had appointed by testament, and the princes of the blood, at the head of whom stood the duke of Orleans, afterwards Louis XII. The latter combined to demand a convocation of the States General, which accordingly took place. The king's minority and the factions at court seemed no unfavourable omens for liberty. But a scheme was artfully contrived, which had the most direct tendency to break the force of a popular assembly. The deputies were classed in six nations, who debated in separate chambers, and consulted each other only upon the result of their respective deliberations. It was easy for the court to foment the jealousies natural to such a partition. Two nations, the Norman and Burgundian, asserted that the right of providing for the regency devolved, in the king's minority, upon the States General; a claim of great boldness, and certainly not much founded upon precedents. In virtue of this, they proposed to form a council, not only of the princes, but of certain deputies to be elected by the six nations who composed the States. But the other four, those of Paris, Aquitaine, Languedoc, and Languedoil, (which last comprised the central provinces,) rejected this plan, from which the two former ultimately desisted, and the choice of counsellors was left to the princes.

A firmer and more unanimous spirit was displayed upon the subject of public reformation. The tyranny of Louis XI. had been

Philip de Comines was forcibly struck with the different situation of England and the Netherlands. And Sir John Fortescue has a remarkable passage on the poverty and servitude of the French commons, contrasted with English freemen. Difference of limited and absolute monarchy, p. 17.

(1) Mém. de Comines, l. iv. c. 19.

so unbounded, that all ranks agreed in calling for redress, and the new governors were desirous, at least by punishing his favourites, to shew their inclination towards a change of system. They were very far, however, from approving the propositions of the States General. These went to points which no court can bear to feel touched, though there is seldom any other mode of redressing public abuses; the profuse expense of the royal household, the number of pensions and improvident grants, the excessive establishment of troops. The States explicitly demanded that the taille and all other arbitrary imposts should be abolished; and that from thenceforward, "according to the natural liberty of France," no tax should be levied in the kingdom without the consent of the States. It was with great difficulty, and through the skilful management of the court, that they consented to the collection of the taxes payable in the time of Charles VII., with the addition of one fourth, as a gift to the king upon his accession. This subsidy they declare to be granted "by way of gift and concession, and not otherwise, and so as no one should from thenceforward call it a tax, but a gift and concession." And this was only to be in force for two years, after which they stipulated that another meeting should be convoked. But it was little likely that the government would encounter such a risk; and the princes, whose factious views the States had by no means seconded, felt no temptation to urge again their convocation. No assembly in the annals of France seems, notwithstanding some party selfishness arising out of the division into nations, to have conducted itself with so much public spirit and moderation; nor had that country perhaps ever so fair a prospect of establishing a legitimate constitution (1).

Successive changes in the judicial polity of France.

V. The right of jurisdiction has undergone changes in France and the adjacent countries, still more remarkable than those of the legislative power; and passed through three very distinct stages, as the popular, aristocratic, or regal influence predominated in the political system.

Original scheme of jurisdiction.

The Franks, Lombards, and Saxons seem alike to have been jealous of judicial authority, and averse to surrendering what concerned every man's private right out of the hands of his neighbours and his equals. Every ten families are supposed to have had a magistrate of their own election: the tythingman of England, the decanus of France and Lombardy (2). Next in order was the Centenarius or Hundredary, whose name expresses the extent of his jurisdiction, and who, like the Decanus,

(1) I am altogether indebted to Garnier for the proceedings of the States of Tours. His account, Hist. de France, t. xviii. p. 154—348., is extremely copious, and derived from a manuscript journal. Comines alludes to them sometimes, but with little particularity.

(2) The Decanus is mentioned by a writer of the ninth age as the lowest species of judge, immediately under the Centenarius. The latter is compared to the Plebanus, or priest of a church, where baptism was performed, and the former to an inferior presbyter. Du Cange, v. Decanus; and Muratori, Antiq. Ital. Dissert. x.

was chosen by those subject to it (1). But the authority of these petty magistrates was gradually confined to the less important subjects of legal inquiry. No man, by a capitulary of Charlemagne, could be impleaded for his life, or liberty, or lands, or servants, in the hundred court (2). In such weighty matters, or by way of appeal from the lower jurisdictions, the count of the district was judge. He indeed was appointed by the sovereign; but his power was checked by assessors, called Scabini, who held their office by the election, or at least the concurrence, of the people (3). These Scabini may be considered as a sort of jury, though bearing a closer analogy to the Judices Selecti, who sat with the Prætor in the tribunals of Rome. An ultimate appeal seems to have lain to the Count Palatine, an officer of the royal household; and sometimes causes were decided by the sovereign himself (4). Such was the original model of judicature; but as complaints of injustice and neglect were frequently made against the counts, Charlemagne, desirous on every account to controul them, appointed special judges, called Missi Regii, who held assizes from place to place, inquired into abuses and mal-administration of justice, enforced its execution, and expelled inferior judges from their offices for misconduct (5).

Territorial jurisdiction.

This judicial system was gradually superseded by one founded upon totally opposite principles, those of feudal privilege. It is difficult to ascertain the progress of territorial jurisdiction. In many early charters of the French kings, beginning with one of Dagobert I. in 630, we find inserted in their grants of land an immunity from the entrance of the ordinary judges, either to hear causes, or to exact certain dues accruing to the king and to themselves. These charters indeed relate to church lands, which, as it seems implied by a law of Charlemagne, universally possessed an exemption from ordinary jurisdiction. A precedent, however, in Marculfus leads us to infer a similar immunity to have been usually in gifts to private persons (6). These rights of justice in the bene-

(1) It is evident from the Capitularies of Charlemagne, Baluze, t. i. p. 466. and 468., that the Centenarii were elected by the people; that is, I suppose, the freeholders.

(2) Ut nullus homo in placito centenarii neque ad mortem, neque ad libertatem suam amittendam, aut ad res reddendas vel mancipia, judicetur. Sed ista aut in præsentiâ comitis vel missorum nostrorum judicentur. Capit. A. D. 812. Baluz. p. 497.

(3) Baluzii Capitularia, p. 466. Muratori, Dissert. 10. Du Cange, v. Scabini. These Scabini may be traced by the light of charters down to the eleventh century. Recueil des Historiens, t. vi. préface, p. 186. There is, in particular, a decisive proof of their existence in 918, in a record which I have already had occasion to quote. Vaissette, Hist. de Languedoc, t. ii. Appendix, p. 56. Du Cange, Baluze, and other antiquaries, have confounded the Scabini with the Rachimburgii, of whom we read in the oldest laws. But M. Guizot has proved the latter were landowners, acting in the county courts as judges under the presidency of the count, but wholly independent of him. The Scabini in Charlemagne's age superseded them. Essai sur l'Histoire de France, p. 259. 272.

(4) Du Cange, Dissertation 14. sur Joinville; and Glossary, v. Comites Palatini. Mém. de l'Acad. des Inscript. t. xxx. p. 590. Louis the Debonair gave one day in every week for hearing causes; but his subjects were required not to have recourse to him, unless where the Missi or the counts had not done justice. Baluze, t. i. p. 668. Charles the Bald expressly reserves an appeal to himself from the inferior tribunals. Capit. 869. t. ii. p. 215. In his reign, there was at least a claim to sovereignty preserved.

(5) For the jurisdiction of the Missi Regii, besides the Capitularies themselves, see Muratori's eighth Dissertation. They went their circuits four times a year. Capitul. A. D. 812. A. D. 823. A vestige of this institution long continued in the province of Auvergne, under the name of Grands Jours d'Auvergne; which Louis XI. revived in 1479. Garnier, Hist. de France, t. xviii. p. 438.

(6) Marculfi Formulæ, l. i. c. 17.

ficiary tenants of the crown are attested in several passages of the Capitularies. And a charter of Louis I. to a private individual contains a full and exclusive concession of jurisdiction over all persons resident within the territory, though subject to the appellant controul of the royal tribunals (1). It is obvious, indeed, that an exemption from the regular judicial authorities implied or naturally led to a right of administering justice in their place. But this could at first hardly extend beyond the tributaries or villeins who cultivated their master's soil, or, at most, to free persons without property, resident in the territory. To determine their quarrels, or chastise their offences, was no very illustrious privilege. An alodial freeholder could own no jurisdiction but that of the king. It was the general prevalence of sub-infeudation, which gave importance to the territorial jurisdictions of the nobility. For now the military tenants, instead of repairing to the county-court, sought justice in that of their immediate lord; or rather the count himself, become the suzerain instead of the governor of his district, altered the form of his tribunal upon the feudal model (2). A system of procedure so congenial to the spirit of the age spread universally over France and Germany. The tribunals of the king were forgotten like his laws; the one retaining as little authority to correct, as the other to regulate, the decisions of a territorial judge. The rules of evidence were superseded by that monstrous birth of ferocity and superstition, the judicial combat, and the maxims of law reduced to a few capricious customs, which varied in almost every barony.

Its divisions.

These rights of administering justice were possessed by the owners of fiefs in very different degrees; and, in France, were divided into the high, the middle, and the low jurisdiction (3). The first species alone (la haute justice) conveyed the power of life and death; it was inherent in the baron and the châtelain, and sometimes enjoyed by the simple vavassor. The lower jurisdictions were not competent to judge in capital cases, and consequently forced to send such criminals to the court of the superior. But in some places, a thief taken in the fact might be punished with death by a lord who had only the low jurisdiction. In England, this privilege was known by the uncouth terms of Infangthef and Outfangthef. The high jurisdiction, however, was not very common in this country, except in the chartered towns (4).

(1) Et nullus comes, nec vicarius, nec juniores eorum, nec ullus judex publicus illorum homines, qui super illorum aprisione habitant, aut in illorum proprio, distringere nec judicare præsumant; sed Johannes et filii sui, et posteritas illorum, illi eos judicent et distringant. Et quicquid per legem judicaverint, stabilis permaneat. Et si extra legem fecerint, per legem emendent. Baluzii Capitularia, t. ii. p. 1403.

This appellant controul was preserved by the capitulary of Charles the Bald, quoted already, over the territorial as well as royal tribunals. Si alliquis episcopus, vel comes ac vassus noster suo homini contra rectum et justitiam fecerit, et si inde ad nos reclamaverit, sciat quia, sicut ratio et lex est, hoc emendare faciemus.

(2) We may perhaps infer, from a capitulary of Charlemagne in 809, that the feudal tenants were already employed as assessors in the administration of justice, concurrently with the Scabini mentioned above. Ut nullus ad placitum venire cogatur, nisi qui causam habet ad quærendum, exceptis scabinis et vassallis comitum. Baluz. Capitularia, t. i. p. 465.

(3) Velly, t. vi. p. 131. Denisart, Houard, and other law-books.

(4) A strangely cruel privilege was possessed in Aragon by the lords who had not the higher juris-

Its administration.

Several customs rendered these rights of jurisdiction far less instrumental to tyranny than we might infer from their extent. While the counts were yet officers of the crown, they frequently appointed a deputy, or viscount, to administer justice. Ecclesiastical lords, who were prohibited by the canons from inflicting capital punishment, and supposed to be unacquainted with the law followed in civil courts, or unable to enforce it, had an officer by name of advocate, or vidame, whose tenure was often feudal and hereditary. The viguiers (vicarii), bailiffs, provosts, and seneschals of lay lords were similar ministers, though not in general of so permanent a right in their offices, or of such eminent station as the advocates of monasteries. It seems to have been an established maxim, at least in later times, that the lord could not sit personally in judgment, but must entrust that function to his bailiff and vassals (1). According to the feudal rules, the lord's vassals or peers of his court were to assist at all its proceedings. "There are some places," says Beaumanoir, "where the bailiff decides in judgment, and others, where the vassals of the lord decide. But even where the bailiff is the judge, he ought to advise with the most prudent, and determine by their advice; since thus he shall be most secure if an appeal is made from his judgment (2)." And indeed the presence of these assessors was so essential to all territorial jurisdiction, that no lord, to whatever rights of justice his fief might entitle him, was qualified to exercise them, unless he had at least two vassals to sit as peers in his court (3).

Trial by combat.

These courts of a feudal barony or manor required neither the knowledge of positive law, nor the dictates of natural sagacity. In all doubtful cases, and especially where a crime not capable of notorious proof was charged, the combat was awarded; and God, as they deemed, was the judge (4). The noble-

diction, and consequently could not publicly execute a criminal; that of starving him to death in prison. This was established by law in 1247. Si vassallus domini non habentis merum nec mixtum imperium, in loco occiderit vassallum, dominus loci potest eum occidere fame, frigore et siti. Et quilibet dominus loci habet hanc jurisdictionem necandi fame, frigore et siti in suo loco, licet nullam aliam jurisdictionem criminalem habeat. Du Cange, voc. Fame necare.

It is remarkable, that the Neapolitan barons had no criminal jurisdiction, at least of the higher kind, till the reign of Alfonso, in 1443, who sold this destructive privilege, at a time when it was almost abolished in other kingdoms. Giannone, l. xxii. c. 5. and l. xxvi. c. 6.

(1) Boutillier, in his Somme Rurale, written near the end of the fourteenth century, asserts this positively. Il convient quilz facent jugier par aultre que par eulx, cest a savoir par leurs hommes feudaulx a leur semonce et *conjuré* (?) ou de leur bailiff ou lieutenant, et ont ressort a leur souverain. fol. 3.

(2) Coutumes de Beauvoisis, p. 11.

(3) It was lawful, in such case, to borrow the vassals of the superior lord. Thaumassiere sur Beaumanoir, p. 375. See Du Cange, v. Pares; an excellent article, and Placitum.

In England, a manor is extinguished, at least as to jurisdiction, when there are not two freeholders subject to escheat left as suitors to the court-baron. Their tenancy must therefore have been created before the statute of Quia emptores, 18 Edw. I. (1290) since which no new estate in fee simple can be held of the lord, nor, consequently, be liable to escheat to him.

(4) Trial by combat does not seem to have established itself completely in France, till ordeals went into disuse, which Charlemagne rather encouraged, and which, in his age, the clergy for the most part approved. The former species of decision may however be met with under the first Merovingian kings, (Greg. Turon. l. vii. c. 19.; l. x. c. 10.) and seems to have prevailed in Burgundy. It is established by the laws of the Alemanni or Swabians. Baluz. t. i. p. 80. It was always popular in Lombardy. Luitprand, king of the Lombards, says in one of his laws: Incerti sumus de judicio Dei, et quosdam audivimus per pugnam sine justâ causâ suam causam perdere. Sed propter consuetudinem gentis nostræ Langobardorum legem impiam vetare non possumus.

man fought on horseback, with all his arms of attack and defence; the plebeian on foot, with his club and target. The same were the weapons of the champions, to whom women and ecclesiastics were permitted to entrust their rights (1). If the combat was intended to ascertain a civil right, the vanquished party of course forfeited his claim, and paid a fine. If he fought by proxy, the champion was liable to have his hand struck off; a regulation necessary perhaps to obviate the corruption of these hired defenders. In criminal cases, the appellant suffered, in the event of defeat, the same punishment which the law awarded to the offence of which he accused his adversary (2). Even where the cause was more peaceably tried, and brought to a regular adjudication by the court, an appeal for false judgment might indeed be made to the suzerain, but it could only be tried by battle (3). And in this, the appellant, if he would impeach the concurrent judgment of the court below, was compelled to meet successively in combat every one of its members; unless he should vanquish them all within the day, his life, if he escaped from so many hazards, was forfeited to the law. If fortune or miracle should make him conqueror in every contest, the judges were equally subject to death, and their court forfeited their jurisdiction for ever. A less perilous mode of appeal was to call the first judge who pronounced a hostile sentence into the field. If the appellant came off victorious in this challenge, the decision was reversed, but the court was not impeached (4). But for denial of justice, that is, for a refusal to try his suit, the plaintiff repaired to the court of the next superior lord, and supported his appeal by testimony (5). Yet, even here, the witnesses might be defied, and the pure stream of justice turned at once into the torrent of barbarous contest (6).

Muratori, Script. Rerum Italicarum, t. ii. p. 65. Otho II. established it in all disputes concerning real property; and there is a famous case, where the right of representation, or preference of the son of a deceased elder child to his uncle in succession to his grandfather's estate, was settled by this test.

(1) For the ceremonies of trial by combat, see Houard, Anciennes Lois Françoises, t. i. p. 284. Velly, t. vi. p. 106. Recueil des Historiens, t. xi. préface, p. 182. Du Cange, v. Duellum. The great original authorities are the Assises de Jérusalem, c. 104. and Beaumanoir, c. 31.

(2) Beaumanoir, p. 315.

(3) Idem, c. 61. In England the appeal for false judgment to the king's court was not tried by battle. Glanvil. l. xii. c. 7.

(4) Idem, c. 61.

(5) Id. p. 315. The practice was to challenge the *second* witness, since the testimony of one was insufficient. But this must be done before he completes his oath, says Beaumanoir, for after he has been sworn, he must be heard and believed, p. 316. No one was bound, as we may well believe, to be a witness for another, in cases where such an appeal might be made from his testimony.

(6) Mably is certainly mistaken in his opinion, that appeals for denial of justice were not older than the reign of Philip Augustus. (Observations sur l'Hist. de F. l. iii. c. 3.) Before this time, the vassal's remedy, he thinks, was to make war upon his lord. And this may probably have been frequently practised. Indeed it is permitted, as we have seen, by the code of St. Louis. But those who were not strong enough to adopt this dangerous means of redress, would surely avail themselves of the assistance of the suzerain, which in general would be readily afforded. We find several instances of the king's interference for the redress of injuries in Suger's Life of Louis VI. That active and spirited prince, with the assistance of his illustrious biographer, recovered a great part of the royal authority, which had been reduced to the lowest ebb in the long and slothful reign of his father, Philip I. One passage, especially, contains a clear evidence of the appeal for denial of justice, and consequently refutes Mably's opinion. In 1105, the inhabitants of St. Sévère, in Berri, complain of their lord Humbald, and request the king aut ad exequendam justitiam cogere, aut jure pro injuriâ castrum lege Salicâ amittere. I quote from the preface to the fourteenth volume of the Recueil des Historiens, p. 44. It may be noticed by the way, that lex Salica is here used for the feudal customs; in which sense I believe it not unfrequently occurs. Many proofs might be brought of the interposition of both Louis VI. and VII. in the disputes between their

Such was the judicial system of France, when St. Louis enacted that great code, which bears the name of his Establishments. The rules of civil and criminal procedure, as well as the principles of legal decisions, are there laid down with much detail. But that incomparable prince, unable to overthrow the judicial combat, confined himself to discouraging it by the example of a wiser jurisprudence. It was abolished throughout the royal domains. The bailiffs and seneschals who rendered justice to the king's immediate subjects were bound to follow his own laws. He not only received appeals from their sentences in his own court of peers, but listened to all complaints with a kind of patriarchal simplicity. "Many times," says Joinville, "I have seen the good Saint, after hearing mass in the summer season, lay himself at the foot of an oak in the wood of Vincennes, and make us all sit round him; when those who would came and spake to him, without let of any officer, and he would ask aloud if there were any present who had suits; and when they appeared, would bid two of his bailiffs determine their cause upon the spot (1)."

Establishments of St. Louis.

The influence of this new jurisprudence established by St. Louis, combined with the great enhancements of the royal prerogatives in every other respect, produced a rapid change in the legal administration of France. Though trial by combat occupies a considerable space in the work of Beaumanoir, written under Philip the Bold, it was already much limited. Appeals for false judgment might sometimes be tried, as he expresses it, par erremens de plait, that is, I presume, where the alleged error of the court below was in matter of law. For wager of battle was chiefly intended to ascertain controverted facts (2). So where the suzerain saw clearly that the judgment of the inferior court was right, he ought not to permit the combat. Or if the plaintiff, even in the first instance, could produce a record or a written obligation; or if the fact before the court was notorious, there was no room for battle (3). It would be a hard thing, says Beaumanoir, that if one had killed my near relation in open day before many credible persons, I should be compelled to fight in order to prove his death. This reflection is the dictate of common sense, and shews that the prejudice in favour of judicial combat was dying away. In the Assises de Jérusalem, a monument of customs two hundred years earlier than the age of Beaumanoir, we find little mention of any other mode of decision. The compiler of that book thinks it would be very injurious, if no wager of battle were to be allowed against witnesses in causes affecting succession; since otherwise every right heir might be disinherited, as it would be easy to find two persons who would

barons and arrière-vassals. Thus the war between the latter and Henri II. of England, in 1166, was occasioned by his entertaining a complaint from the count of Auvergne, without waiting for the decision of Henry, as duke of Guienne. Velly, t. iii. p. 190. Littleton's Henry II. vol. ii. p. 448. Recueil des Historiens, ubi supra, p. 49.

(1) Collection des Mémoires, t. i. p. 25.

(2) Beaumanoir, p. 22.

(3) Idem, p. 314.

perjure themselves for money, if they had no fear of being challenged for their testimony (1). This passage indicates the real cause of preserving the judicial combat; systematic perjury in witnesses, and want of legal discrimination in judges.

It was, in all civil suits, at the discretion of the litigant parties, to adopt the law of the Establishments, instead of resorting to combat (2). As gentler manners prevailed, especially among those who did not make arms their profession, the wisdom and equity of the new code was naturally preferred. The superstition which had originally led to the latter lost its weight through experience and the uniform opposition of the clergy. The same superiority of just and settled rules over fortune and violence, which had forwarded the encroachments of the ecclesiastical courts, was now manifested in those of the king. Philip Augustus, by a famous ordinance in 1190, first established royal courts of justice, held by the officers called bailiffs or seneschals, who acted as the king's lieutenants in his domains (3). Every barony, as it became reunited to the crown, was subjected to the jurisdiction of one of these officers, and took the name of a bailliage or a seneschaussée; the former name prevailing most in the northern, the latter in the southern provinces. The vassals whose lands depended upon, or, in feudal language, moved from the superiority of this fief, were obliged to submit to the ressort or supreme appellant jurisdiction of the royal court established in it (4). This began rapidly to encroach upon the feudal rights of justice. In a variety of cases, termed royal, the territorial court was pronounced incompetent; they were reserved for the judges of the crown; and, in every case, unless the defendant excepted to the jurisdiction, the royal court might take cognizance of a suit, and decide it in exclusion of the feudal judicature (5). The nature of cases reserved under the name of royal was kept in studied ambiguity, under cover of which the judges of the crown perpetually strove to multiply them. Louis X., when requested by the barons of Champagne to explain what was meant by royal causes, gave this mysterious definition: Every thing which by right or custom ought exclusively to come under the cognizance of a sovereign prince (6). Vassals were permitted to complain in the first instance to the king's court, of injuries committed by their lords. These rapid and violent encroachments left the nobility no alternative but armed combinations to support their remonstrances. Philip the Fair bequeathed to his successor the task of appeasing a storm which his own administration had excited. Leagues were formed in most of the northern provinces for the redress of grievances, in which the third

Royal tribunals and progress of their jurisdiction.

(1) C. 167.
(2) Beaumanoir, p. 309.
(3) Ordonnances des Rois, t. i. p. 18.
(4) Du Cange, v. Ballivi. Mém. de l'Acad. des Inscriptions, t. xxx. p. 603. Mably, l. iv. c. 4. Boulainvilliers, t. ii. p. 22.
(5) Mably, Boulainvilliers. Montlosier, t. i. p. 104.
(6) Ordonnances des Rois, p. 606.

estate, oppressed by taxation, united with the vassals, whose feudal privileges had been infringed. Separate charters were granted to each of these confederacies by Louis Hutin, which contain many remedial provisions against the grosser violations of ancient rights, though the crown persisted in restraining territorial jurisdictions(1). Appeals became more common for false judgment, as well as denial of right: and in neither was the combat permitted. It was still, however, preserved in accusations of heinous crimes, unsupported by any testimony but that of the prosecutor, and was never abolished by any positive law, either in France or England. But instances of its occurrence are not frequent even in the fourteenth century; and one of these, rather remarkable in its circumstances, must have had a tendency to explode the remaining superstition which had preserved this mode of decision (2).

Royal council, or court of peers.

The supreme council, or court of peers, to whose deliberative functions I have already adverted, was also the great judicial tribunal of the French crown from the accession of Hugh Capet. By this alone the barons of France, or tenants in chief of the king, could be judged. To this court appeals for denials of justice were referred. It was originally composed, as has been observed, of the feudal vassals, co-equals of those who were to be tried by it; and also of the household officers, whose right of concurrence, however anomalous, was extremely ancient (3). But after the business of the court came to increase through the multiplicity of appeals, especially from the bailiffs established by Philip Augustus in the royal domains, the barons found neither leisure nor capacity for the ordinary administration of justice, and reserved their attendance for occasions where some of their own orders were implicated in a criminal process. St. Louis, anxious for regularity and enlightened decisions, made a considerable alteration by introducing some counsellors of inferior rank, chiefly ecclesiastics, as advisers of the court, though, as is supposed, without any decisive suffrage. The court now became known by the name of parliament. Registers of its proceedings were kept, of which the earliest extant are of the year 1254. It was still perhaps in some degree ambulatory; but by far the greater part of its sessions in the thirteenth century were at Paris. The counsellors nominated by

Cours Plénières.

(1) Hoc perpetuo prohibemus edicto, ne subditi, seu justiciabiles prælatorum aut baronum nostrorum aut aliorum subjectorum nostrorum, trahantur in causam coram nostris officialibus, nec eorum causæ, nisi in casu ressorti, in nostris curiis audiantur, vel in alio casu ad nos pertinenti. Ordonnances des Rois, t. i. p. 362. This ordinance is of Philip the Fair, in 1302; but those passed under Louis Hutin are to the same effect. They may be read at length in the Ordonnances des Rois; or abridged by Boulainvilliers, t. ii. p. 94.

(2) Philip IV. restricted trial by combat to cases where four conditions were united. The crime must be capital: Its commission certain: The accused greatly suspected: And no proof to be obtained by witnesses. Under these limitations, or at least some of them, for it appears that they were not all regarded, instances occur for some centuries.

See the singular story of Carouges and Le Gris, to which I allude in the text. Villaret, t. xi. p. 412. Trial by combat was allowed in Scotland exactly under the same conditions as in France. Pinkerton's Hist. of Scotl. vol. i. p. 66.

(3) This court had always, it must be owned, a pretty considerable authority over some of the royal vassals. Even in Robert's reign, the count of Anjou and another nobleman of less importance were summoned before it. Recueil des Historiens, t. x. p. 473. 476.

the king, some of them clerks, others of noble rank, but not peers of the ancient baronage, acquired insensibly a right of suffrage (1).

Parliament of Paris.

An ordinance of Philip the Fair in 1302 is generally supposed to have fixed the seat of parliament at Paris, as well as altered its constituent parts (2). Perhaps a series of progressive changes has been referred to a single epoch. But whether by virtue of this ordinance, or of more gradual events, the character of the whole feudal court was nearly obliterated in that of the parliament of Paris. A systematic tribunal took the place of a loose aristocratic assembly. It was to hold two sittings in the year, each of two months' duration; it was composed of two prelates, two counts, thirteen clerks, and as many laymen. Great changes were made afterwards in this constitution. The nobility, who originally sat there, grew weary of an attendance, which detained them from war, and from their favourite pursuits at home. The bishops were dismissed to their necessary residence upon their sees(3). As they withdrew, that class of regular lawyers, originally employed, as it appears, in the preparatory business without any decisive voice, came forward to the higher places, and established a complicated and tedious system of procedure, which was always characteristic of French jurisprudence. They introduced at the same

Decline of the feudal system.

time a new theory of absolute power, and unlimited obedience. All feudal privileges were treated as encroachments on the imprescriptible rights of monarchy. With the natural bias of lawyers in favour of prerogative conspired that of the clergy, who fled to the king for refuge against the tyranny of the barons. In the civil and canon laws a system of political maxims was found, very uncongenial to the feudal customs. The French lawyers of the fourteenth and fifteenth centuries frequently gave their king the title of Emperor, and treat disobedience to him as sacrilege (4).

Peers of France.

But among these lawyers, although the general tenants of the crown by barony ceased to appear, there still continued to sit a more eminent body, the lay and spiritual peers of France, representatives, as it were, of that ancient baronial aristocracy. It is a very controverted question, at what time this exclusive dignity of peerage, a word obviously applicable by the feudal law to all persons co-equal in degree of tenure, was reserved to twelve vassals. At the coronation of Philip Augustus, in 1179, we first perceive the six great feudatories, dukes of Burgundy,

(1) Boulainvilliers, t. ii. p. 29. 44. Mably, l. iv. c. 2. Encyclopédie, Art. Parlement. Mém. de l'Acad. des Inscript. t. xxx. p. 603. The great difficulty I have found in this investigation will plead my excuse, if errors are detected.

(2) Pasquier (Recherches de la France, l. ii. c. 3.) published this ordinance, which, indeed, as the editor of Ordonnances des Rois, t. i. p. 547., observes, is no ordinance, but a regulation for the execution of one previously made; nor does it establish the residence of the parliament of Paris.

(3) Velly, Hist. de France, t. vii. p. 303., and Encyclopédie, Art. Parlement, are the best authorities I have found. There may very possibly be superior works on this branch of the French constitution, which have not fallen into my hands.

(4) Mably, l. iv. c. 2. note 10,

Normandy, Guienne, counts of Toulouse, Flanders, Champagne, distinguished by the offices they performed in that ceremony. It was natural indeed that, by their princely splendour and importance, they should eclipse such petty lords as Bourbon and Coucy, however equal in quality of tenure. During the reign of Philip Augustus, six ecclesiastical peers, the duke-bishops of Rheims, Laon, and Langres, the count-bishops of Beauvais, Châlons, and Noyon, were added, as a sort of parallel or counterpoise (1). Their precedence does not, however, appear to have carried with it any other privilege, at least in judicature, than other barons enjoyed. But their pre-eminence being fully confirmed, Philip the Fair set the precedent of augmenting their original number, by conferring the dignity of peerage on the duke of Britany and the count of Artois (2). Other creations took place subsequently; but they were confined, during the period comprised in this work, to princes of the royal blood. The peers were constant members of the parliament, from which other vassals holding in chief were never perhaps excluded by law, but their attendance was rare in the fourteenth century, and soon afterwards ceased altogether (3).

Progress of the jurisdiction of the parliament.

A judicial body composed of the greatest nobles in France, as well as of learned and eminent lawyers, must naturally have soon become politically important. Notwithstanding their disposition to enhance every royal prerogative, as opposed to feudal privileges, the parliament was not disinclined to see its own protection invoked by the subject. It appears by an ordinance of Charles V. in 1371, that the nobility of Languedoc had appealed to the parliament of Paris against a tax imposed by the king's authority; and this, at a time when the French constitution did not recognize the levying of money without consent of the States General, must have been a just ground of appeal, though the present ordinance annuls and overturns it (4). During the tempests of Charles VI.'s unhappy reign, the parliament acquired a more decided authority, and held, in some degree, the balance between the contending factions of Orleans and Burgundy. This influence was partly owing to one remarkable function attributed to the parliament, which raised it much above the level of a merely political tribunal, and has at various times wrought striking effects in the French monarchy.

Royal edicts enregistered in parliament.

The few ordinances enacted by kings of France in the twelfth and thirteenth centuries were generally by the advice of their royal council, in which probably they were solemnly declared as well as agreed upon. But after the gradual revolution of government, which took away from the feudal aristocracy all controul over the king's edicts, and substi-

(1) Velly, t. ii. p. 287.; t. iii. p. 221.; t. iv. p. 44.
(2) Idem, t. vii. p. 97.
(3) Encyclopédie, Art. Parlement, p. 6.
(4) Mably, l. v. c. 3. note 5.

tuted a new magistracy for the ancient baronial court, these legislative ordinances were commonly drawn up by the interior council, or what we may call the ministry. They were in some instances promulgated by the king in parliament. Others were sent thither for registration, or entry upon their records. This formality was by degrees, if not from the beginning, deemed essential to render them authentic and notorious, and therefore indirectly gave them the sanction and validity of a law (1). Such, at least, appears to have been the received doctrine before the end of the fourteenth century. It has been contended by Mably, among other writers, that at so early an epoch, the parliament of Paris did not enjoy, nor even claim to itself that anomalous right of judging the expediency of edicts proceeding from the king, which afterwards so remarkably modified the absoluteness of his power. In the fifteenth-century, however, it certainly manifested pretensions of this nature: first by registering ordinances in such a manner as to testify its own unwillingness and disapprobation, of which one instance occurs as early as 1418, and another in 1443; and, afterwards, by remonstrating against, and delaying the registration of laws, whitch it deemed inimical to the public interest. A conspicuous proof of this spirit was given in their opposition to Louis XI. when repealing the Pragmatic Sanction of his father; an ordinance essential, in their opinion, to the liberties of the Gallican church. In this instance they ultimately yielded; but at another time they persisted in a refusal to enregister letters containing an alienation of the royal domain (2).

Counsellors of parliament appointed for life and by election.

The counsellors of parliament were originally appointed by the king; and they were even changed according to circumstances. Charles V. made the first alteration, by permitting them to fill up vacancies by election; which usage continued during the next reign. Charles VII. resumed the nomination of fresh members upon vacancies. Louis XI. even displaced actual counsellors. But in 1468, from whatever motive, he published a most important ordinance, declaring the presidents and counsellors of parliament immoveable, except in case of legal forfeiture (3). This extraordinary measure of conferring independence on a body, which had already displayed a consciousness of its eminent privilege by opposing the registration of his edicts, is perhaps to be deemed a proof of that short-sightedness as to points of substantial interest, so usually found in crafty men. But, be this as it may, there was formed in the parliament of Paris an independent power not emanating from the royal will, nor liable, except through force, to be destroyed by it; which, in later times, became almost the sole depositary, if not of

(1) Encyclopédie, Art. Parlement.
(2) Mably, l. vi. c. 5. note 19. and 21. Garnier. Hist. de France, t. xvii. p. 219. 380.
(3) Villaret, t. xiv. p. 231. Encyclopédie, Art. Parlement.

what we should call the love of freedom, yet of public spirit and attachment to justice. France, so fertile of great men in the sixteenth and seventeenth centuries, might better spare, perhaps, from her annals any class and description of them than her lawyers. Doubtless the parliament of Paris, with its prejudices and narrow views, its high notions of loyal obedience, so strangely mixed up with remonstrances and resistance, its anomalous privilege of objecting to edicts, hardly approved by the nation who did not participate in it, and overturned with facility by the king, whenever he thought fit to exert the sinews of his prerogative, was but an inadequate substitute for that co-ordinate sovereignty, that equal concurrence of natural representatives in legislation, which has long been the exclusive pride of our government, and to which the States General of France, in their best days, had never aspired. No man of sane understanding would desire to revive institutions, both uncongenial to modern opinions, and to the natural order of society. Yet the name of the parliament of Paris must ever be respectable. It exhibited, upon various occasions, virtues from which human esteem is as inseparable as the shadow from the substance; a severe adherence to principles, an unaccommodating sincerity, individual disinterestedness and consistency. Whether indeed these qualities have been so generally characteristic of the French people, as to afford no peculiar commendation to the parliament of Paris, it is rather for the observer of the present day, than the historians of past times, to decide (1).

Causes of the decline of the feudal system.

The principal causes that operated in subverting the feudal system may be comprehended under three distinct heads; the increasing power of the crown, the elevation of the lower ranks, and the decay of the feudal principle.

Acquisitions of power by the crown.

It has been my object in the last pages to point out the acquisitions of power by the crown of France in respect of legislative and judicial authority. The principal augmentations of its domain have been historically mentioned

(1) The province of Languedoc, with its dependencies of Quercy and Rouergue, having belonged almost in full sovereignty to the counts of Toulouse, was not perhaps subject to the feudal resort, or appellant jurisdiction of any tribunal at Paris. Philip the Bold, after its reunion to the crown, established the parliament of Toulouse, a tribunal without appeal, in 1280. This was however suspended from 1291 to 1443, during which interval the parliament of Paris exercised an appellant jurisdiction over Languedoc. Vaissette, Hist. de Lang. t. iv. p. 60, 71. 324. Sovereign courts or parliaments were established by Charles VII. at Grenoble for Dauphiné, and by Louis XI. at Bordeaux and Dijon for Guienne and Burgundy. The parliament of Rouen is not so ancient. These institutions rather diminished the resort of the parliament of Paris, which had extended over Burgundy, and, in time of peace, over Guienne.

A work has appeared within a very few years, which throws an abundant light on the judicial system, and indeed on the whole civil polity of France, as well as other countries, during the middle ages. I allude to l'Esprit, Origine et Progrès des Institutions judiciaires des principaux Pays de l'Europe, by M. Meyer, of Amsterdam; especially the first and third volumes. It would have been fortunate had its publication preceded that of the first edition of the present work; as I might have rendered this chapter on the feudal system in many respects more perspicuous and correct. As it is, without availing myself of M. Meyer's learning and acuteness to illustrate the obscurity of these researches, or discussing the few questions upon which I might venture, with deference, to adhere to another opinion, neither of which could conveniently be done on the present occasion, I shall content myself with this general reference to a performance of singular diligence and ability, which no student of these antiquities should neglect. In all essential points I am happy to perceive that M. Meyer's views of the middle ages, are not far different from my own.—*Note to the fourth edit.*

Augmentation of the domain.

in the last chapter; but the subject may here require further notice. The French kings naturally acted upon a system, in order to recover those possessions, which the improvidence or necessities of the Carlovingian race had suffered almost to fall away from the monarchy. This course, pursued with tolerable steadiness for two or three centuries, restored their effective power. By escheat or forfeiture, by bequest or purchase, by marriage or succession, a number of fiefs were merged in their increasing domain (1). It was part of their policy to obtain possession of arriere-fiefs, and thus to become tenants of their own barons. In such cases, the king was obliged, by the feudal duties, to perform homage, by proxy, to his subjects, and engage himself to the service of his fief. But, for every political purpose, it is evident that the lord could have no command over so formidable a vassal (2).

The reunion of so many fiefs was attempted to be secured by a legal principle, that the domain was inalienable and imprescriptible. This became at length a fundamental maxim in the law of France. But it does not seem to be much older than the reign of Philip V., who, in 1318, revoked the alienations of his predecessors, nor was it thoroughly established, even in theory, till the fifteenth century (3). Alienations, however, were certainly very repugnant to the policy of Philip Augustus and St. Louis. But there was one species of infeudation, so consonant to ancient usage and prejudice, that it could not be avoided upon any suggestion of policy; this was the investiture of younger princes of the blood with considerable territorial apanages. It is remarkable that the epoch of apanages on so great a scale was the reign of St. Louis, whose efforts were constantly directed against feudal independence. Yet he invested

(1) The word domain is calculated, by a seeming ambiguity, to perplex the reader of French history. In its primary sense, the domain or demesne (dominicum) of any proprietor was confined to the lands in his immediate occupation; excluding those of which his tenants, whether in fief or villenage, whether for a certain estate or at will, had an actual possession, or, in our law-language, pernancy of the profits. Thus the compilers of Domesday-Book distinguish, in every manor, the lands held by the lord in demesne from those occupied by his villeins or other tenants. And, in England, the word, if not technically, yet in use is still confined to this sense. But in a secondary acceptation, more usual in France, the domain comprehended all lands for which rent was paid (censives), and which contributed to the regular annual revenue of the proprietor. The great distinction was between lands in demesne, and those in fief. A grant of territory, whether by the king or another lord, comprising as well domanial estates and tributary towns, as feudal superiorities, was expressed to convey "in dominico quod est in dominico, et in feodo quod est in feodo." Since, therefore, fiefs, even those of the vavassors or inferior tenantry, were not part of the lord's domain, there is, as I said, an apparent ambiguity in the language of historians, who speak of the reunion of provinces to the royal domain. This ambiguity however is rather apparent than real. When the duchy of Normandy, for example, is said to have been united by Philip Augustus to his domain, we are not of course to suppose that the soil of that province became the private estate of the crown. It continued, as before, in the possession of the Norman barons and their sub-vassals, who had held their estates of the dukes. But it is meant only, that the king of France stood exactly in the place of the duke of Normandy, with the same rights of possession over lands absolutely in demesne, of rents and customary payments from the burgesses of towns and tenants in roture or villenage, and of feudal services from the military vassals. The immediate superiority, and the immediate resort, or jurisdiction, over these devolved to the crown: and thus the duchy of Normandy, considered as a fief, was reunited, or, more properly, merged in the royal domain, though a very small part of the territory might become truly domanial.

(2) See a memorial on the acquisition of arriere-fiefs by the kings of France, in Mém. de l'Acad. des Inscript. t. 1., by M. Dacier.

(3) Préface au 15me tome des Ordonnances, par M. de Pastoret.

his brothers with the counties of Poitou, Anjou, and Artois, and his sons with those of Clermont and Alençon. This practice, in later times, produced very mischievous consequences.

Under a second class of events that contributed to destroy the spirit of the feudal system, we may reckon the abolition of villenage; the increase of commerce, and consequent opulence of merchants and artizans; and especially the institutions of free cities and boroughs. This is one of the most important and interesting steps in the progress of society during the middle ages, and deserves particular consideration.

Free and chartered towns.

The provincial cities under the Roman empire enjoyed, as is well known, a municipal magistracy and the right of internal regulation. It would not have been repugnant, perhaps, to the spirit of the Frank and Gothic conquerors, to have left them in possession of these privileges. But there seems no satisfactory proof that they were preserved either in France or in Italy (1); or, if they existed at all, they were swept away, in the former country, during the confusion of the ninth century, which ended in the establishment of the feudal system. Every town, except within the royal domains, was subject to some lord. In episcopal cities, the bishop possessed a considerable authority; and in many, there was a class of resident nobility. It is probable, that the proportion of freemen was always greater than in the country; some sort of retail trade, and even of manufacture, must have existed in the rudest of the middle ages, and consequently some little capital was required for their exercise. Nor was it so easy to oppress a collected body, as the scattered and dispirited cultivators of the soil. Probably therefore the condition of the towns was at all times by far the more tolerable servitude; and they might enjoy several immunities by usage, before the date of those charters which gave them sanction. In Provence, where the feudal star shone with a less powerful ray, the cities, though not independently governed, were more flourishing than the French. Marseilles, in the beginning of the twelfth age, was able to equip powerful navies, and to share in the wars of Genoa and Pisa against the Saracens of Sardinia (2).

Earliest charters.

The earliest charters of community granted to towns in France have been commonly referred to the time of Louis the Sixth; though it is not improbable that some

(1) M. de Bréquigny says, that Lyons and Rheims can trace their own municipal government some centuries higher than the establishment of communes by Louis VI. The former city, which indeed was not French at the time, never had a charter of incorporation. Ordonnances des Rois, t. xi. préface, p. 4. This preface contains an excellent account of the origin and privileges of chartered towns in France.

(2) There were more freemen in Provence, says an historian of the country, than in any other part of France; and the revolutions of the monarchy being less felt than elsewhere, our towns naturally preserved their municipal government. I have borrowed this quotation from Heeren, Essai sur l'Influence des Croisades, p. 122., to whom I am indebted for other assistance. Vaissette also thinks, that the inhabitants of towns in Languedoc were personally free in the tenth century; though those of the country were in servitude. Hist. de Languedoc, t. ii. p. 111.

cities in the south had a municipal government by custom, if not by grant, at an earlier period (1). Noyon, St. Quentin, Laon, and Amiens appeared to have been the first that received emancipation at the hands of this prince (2). The chief towns in the royal domains were successively admitted to the same privileges during the reigns of Louis VI., Louis VII., and Philip Augustus. This example was gradually followed by the peers and other barons; so that by the end of the thirteenth century, the custom had prevailed over all France. It has been sometimes imagined, that the crusades had a material influence in promoting the erection of communities. Those expeditions would have repaid Europe for the prodigality of crimes and miseries which attended them, if this notion were founded in reality. But I confess, that in this, as in most other respects, their beneficial consequences appear to me very much exaggerated. The cities of Italy obtained their internal liberties by gradual encroachments,

Causes of granting them not to be found in the crusades,

(1) Ordonnances des Rois, ubi suprà, p. 7. These charters are as old as 1110, but the precise date is unknown.

(2) The Benedictine historians of Languedoc are of opinion that the city of Nismes had municipal magistrates even in the middle of the tenth century, t. ii. p. 111. However this may be, the *citizens* of Narbonne are expressly mentioned in 1060. Appendix, p. 308. The *burgesses* of Carcassonne appear by name in a charter of 1107. p. 515. In one of 1131, the *consuls* of Beziers are mentioned; they existed therefore previously. p. 409. and Appendix, p. 959. The magistrates of St. Antonin en Rouergue are named in 1136; those of Montpellier in 1142; of Narbonne in 1148; and of St. Gilles in 1149. p. 515. 432. 442. 464. The capitouls of Toulouse pretend to an extravagant antiquity; but were in fact established by Alfonso, count of Toulouse, who died in 1148. In 1152, Raymond V. confirmed the regulations made by the common council of Toulouse, which became the foundation of the customs of that city, p. 472.

If we may trust altogether to the Assises de Jérusalem in their present shape, the court of burgesses having jurisdiction over persons of that rank, was instituted by Godfroy of Bouillon, who died 1100. Assises de Jérusalem, c. 2. This would be even earlier than the charter of London, granted by Henry I. Lord Littleton goes so far as to call it "certain, that in England many cities and towns were bodies corporate and communities long before the alteration introduced into France by the charters of Louis le Gros." Hist. of Henry II. vol. iv. p. 29. But this position, as I shall more particularly shew in another place, is not borne out by any good authority, if it extends to any internal jurisdiction, and management of their own police; whereof, except in the instance of London, we have no proof before the reign of Henry II.

But the incorporation of communities seems to have been decidedly earlier in Spain than in any other country. Alfonso V., in 1020, granted a charter to Leon, which is said to mention the common council of that city in terms that shew it to be an established institution. During the latter part of the eleventh century, as well as in subsequent times, such charters are very frequent. Marina, Ensayo historico-critico sobre las siete partidas. In several instances, we find concessions of smaller privileges to towns, without any political power. Thus Berenger, count of Barcelona, in 1025, confirms to the inhabitants of that city all the franchises which they already possess. These seem however to be confined to exemption from paying rent, and from any jurisdiction below that of an officer deputed by the count. De Marca, Marca Hispanica, p. 1038. Another grant occurs in the same volume, p. 909., from the bishop of Barcelona in favour of a town of his diocese. By some inattention, Robertson has quoted these charters as granted to "two villages in the county of Roussillon." Hist. Charles V. note 16. The charters of Tortosa and Lerida in 1149 do not contain any grant of jurisdiction. p. 1303.

The corporate towns in France and England always enjoyed fuller privileges than these Catalonian charters impart. The essential characteristics of a commune, according to M. Bréquigny, were: an association confirmed by charter; a code of fixed sanctioned customs; and a set of privileges always including municipal or elective government. Ordonnances, ubi supra, p. 3. A distinction ought however to be pointed out, which is rather liable to elude observation, between communes, or corporate towns, and boroughs (bourgeoisies). The main difference was, that in the latter there was no elective government, the magistrates being appointed by the king, or other superior. In the possession of fixed privileges and exemptions, in the personal liberty of their inhabitants, and in the certainty of their legal usages, there was no distinction between corporate towns and mere boroughs; and indeed it is agreed, that every corporate town was a borough, though every borough was not a corporation.* The French antiquary quoted above does not trace these inferior communities or boroughs, higher than the charters of Louis VI. But we find the name, and a good deal of the substance, in England under William the Conqueror, as is manifest from Domesday-Book.

* The preface to the twelfth volume of Ordonnances des Rois contains a full account of *bourgeoisies*, as that to the eleventh does of *communes*. A great part of it, however, is applicable to both species, or rather to the genus and the species. See too that to the fourteenth volume of Recueil des Historiens, p. 74.

and by the concessions of the Franconian emperors. Those upon the Rhine owed many of their privileges to the same monarchs, whose cause they had espoused in the rebellions of Germany. In France, the charters granted by Louis the Fat could hardly be connected with the first crusade, in which the crown had taken no part, and were long prior to the second. It was not till fifty years afterwards, that the barons seem to have trod in his steps by granting charters to their vassals, and these do not appear to have been particularly related in time to any of the crusades. Still less can the corporations erected by Henry II. in England be ascribed to these holy wars, in which our country had hitherto taken no considerable share.

nor in deliberate policy.

The establishment of chartered towns in France has also been ascribed to deliberate policy. "Louis the Gross," says Robertson, "in order to create some power that might counterbalance those potent vassals who controuled, or gave law to the crown, first adopted the plan of conferring new privileges on the towns situated within his own domain." Yet one does not immediately perceive, what strength the king could acquire by granting these extensive privileges within his own domains, if the great vassals were only weakened, as he asserts afterwards, by following his example. In what sense, besides, can it be meant, that Noyon or Amiens, by obtaining certain franchises, became a power that could counterbalance the duke of Normandy, or count of Champagne? It is more natural to impute this measure, both in the king and his barons, to their pecuniary exigencies; for we could hardly doubt that their concessions were sold at the highest price, even if the existing charters did not exhibit the fullest proof of it (1). It is obvious, however, that the coarser methods of rapine must have grown obsolete, and the rights of the inhabitants of towns to property established, before they could enter into any compact with their lord for the purchase of liberty. Guibert, abbot of St. Nogent, near Laon, relates the establishment of a community in that city with circumstances that, in the main, might probably occur in any other place. Continual acts of violence and robbery having been committed, which there was no police adequate to prevent, the clergy and principal inhabitants agreed to enfranchise the populace for a sum of money, and to bind the whole society by regulations for general security. These conditions were gladly accepted; the money was paid, and the leading men swore to maintain the privileges of the inferior freemen. The bishop of Laon, who happened to be absent, at first opposed this new institution, but was ultimately induced by money to take a similar oath, and the community was confirmed by the king. Unluckily for himself, the bishop afterwards annulled the charter; when the

Circumstances attending the treaty of Laon.

(1) Ordonnances des Rois, t. xi. préface, p. 18. et 50.

inhabitants, in despair at seeing themselves reduced to servitude, rose and murdered him. This was in 1112; and Guibert's narrative certainly does not support the opinion, that charters of community proceeded from the policy of government. He seems to have looked upon them with the jealousy of a feudal abbot, and blames the bishop of Amiens, for consenting to such an establishment in his city, from which, according to Guibert, many evils resulted. In his sermons, we are told, this abbot used to descant on "those execrable communities, where serfs against law and justice withdraw themselves from the power of their lords (1)."

In some cases they were indebted for success to their own courage and love of liberty. Oppressed by the exactions of their superiors, they had recourse to arms, and united themselves in a common league confirmed by oath, for the sake of redress. One of these associations took place at Mans as early as 1067, and, though it did not produce any charter of privileges, is a proof of the spirit to which ultimately the superior classes were obliged to submit (2). Several charters bear witness, that this spirit of resistance was justified by oppression. Louis VII. frequently declares the tyranny exercised over the towns to be his motive for enfranchising them. Thus the charter of Mantes in 1150 is said to be given pro nimiâ oppressione pauperum: that of Compiegne in 1153, propter enormitates clericorum: that of Dourlens, granted by the count of Ponthieu in 1202, propter injurias et molestias a potentibus terræ burgensibus frequenter illatas (3).

The extent of their privileges.

The privileges which these towns of France derived from their charters were surprisingly extensive; especially if we do not suspect some of them to be merely in confirmation of previous usages. They were made capable of possessing common property, and authorized to use a common seal as the symbol of their incorporation. The more oppressive and ignominious tokens of subjection, such as the fine paid to the lord for permission to marry their children, were abolished. Their payments of rent or tribute were limited both in amount and as to the occasions when they might be demanded; and these were levied by assessors of their own electing. Some obtained an exemption from assisting their lord in war; others were only bound to follow him when he personally commanded; and almost all limited their service to one, or at the utmost very few days. If they were persuaded to extend its duration, it was, like that of feudal tenants, at the cost of their superior. Their customs, as to succession and other matters of private right, were reduced to certainty, and, for the most part, laid down in the charter of incorporation. And the observation of these was secured by the most valuable privilege which the chartered towns obtained: that of exemption from the jurisdiction, as well of

(1) Hist. Littéraire de la France, t. x. p. 448. Du ange, voc Communia.

(2) Recueil des Historiens, t. xiv. préface, p. 66.

(3) Ordonnances des Rois, t. xi. préface, p. 17.

the royal, as the territorial judges. They were subject only to that of magistrates, either wholly elected by themselves, or, in some places, with a greater or less participation of choice in the lord. They were empowered to make special rules, or, as we call them, bye-laws, so as not to contravene the provisions of their charter, or the ordinances of the king (1).

Connexion of free towns with the king.

It was undoubtedly far from the intention of those barons who conferred such immunities upon their subjects, to relinquish their own superiority, and rights not expressly conceded. But a remarkable change took place in the beginning of the thirteenth century, which affected, in a high degree, the feudal constitution of France. Towns, distrustful of their lord's fidelity, sometimes called in the king as guarantee of his engagements. The first stage of royal interference led to a more extensive measure. Philip Augustus granted letters of safeguard to communities dependent upon the barons, assuring to them his own protection and patronage (2). And this was followed up so quickly by the court, if we believe some writers, that in the next reign Louis VIII. pretended to the immediate sovereignty over all chartered towns, in exclusion of their original lords (3). Nothing, perhaps, had so decisive an effect in subverting the feudal aristocracy. The barons perceived too late, that for a price long since lavished in prodigal magnificence, or useless warfare, they had suffered the source of their wealth to be diverted, and the nerves of their strength to be severed. The government prudently respected the privileges secured by charter. Philip the Long established an officer in all large towns to preserve peace by an armed police; but, though subject to the orders of the crown, he was elected by the burgesses; and they took a mutual oath of fidelity to each other. Thus shielded under the king's mantle, they ventured to encroach upon the neighbouring lords, and to retaliate for the long oppression of the commonalty (4). Every citizen was bound by oath to stand

(1) Idem, préfaces aux tomes xi. et xii. Du Cange, voc. Communia, Hostis. Carpentier, Suppl. ad Du Cange, v. Hostis. Mably, Observations sur l'Hist. de France, l. iii. c. 7.

(2) Mably, Obs. sur l'Hist. de France, l. iii. c. 7.

(3) Reputabat civitates omnes suas esse, in quibus communiæ essent. I mention this in deference to Du Cange, Mably, and others, who assume the fact as incontrovertible; but the passage is only in a monkish chronicler, whose authority, were it even more explicit, would not weigh much in a matter of law. Beaumanoir, however, sixty years afterwards, lays it down, that no one can erect a commune without the king's consent, c. 50. p. 268. And this was an unquestionable maxim in the fourteenth century. Ordonnances, t. xi. p. 29.

(4) In the charter of Philip Augustus to the town of Roye in Picardy, we read: If any stranger, whether noble or villein, commits a wrong against the town, the mayor shall summon him to answer for it, and if he does not obey the summons, the mayor and inhabitants may go and destroy his house, in which we (the king) will lend them our assistance, if the house be too strong for the burgesses to pull down: except the case of one of our vassals, whose house shall not be destroyed; but he shall not be allowed to enter the town, till he has made amends at the discretion of the mayor and jurats. Ordonnances des Rois, t. xi. p. 228. This summary process could only, as I conceive, be employed, if the house was situated within the jurisdiction of the commune. See charter of Crespy, id. p. 253. In other cases, the application for redress was to be made in the first instance to the lord of the territory wherein the delinquent resided. But upon his failing to enforce satisfaction, the mayor and jurats might satisfy themselves; liceat justitiam quærere, prout poterunt; that is, might pull down his house, provided they could. Mably positively maintains the communes to have had the right of levying war, l. iii. c. 7. And Bréquigny seems to coincide with him. Ordonnances, préface, p. 46. See also Hist. de Languedoc, t. iii. p. 115. The territory of a commune was called Pax; (p. 185.) an expressive word.

by the common cause against all aggressors, and this obligation was abundantly fulfilled. In order to swell their numbers, it became the practice to admit all who came to reside within their walls to the rights of burghership, even though they were villeins, appertenant to the soil of a master, from whom they had escaped (1). Others, having obtained the same privileges, continued to dwell in the country; but, upon any dispute with their lords, called in the assistance of their community. Philip the Fair, erecting certain communes in Languedoc, gave to any who would declare on oath that he was aggrieved by the lord or his officers, the right of being admitted a burgess of the next town, upon paying one mark of silver to the king, and purchasing a tenement of a definite value. But the neglect of this condition, and several other abuses, are enumerated in an instrument of Charles V., redressing the complaints made by the nobility and rich ecclesiastics of the neighbourhood (2). In his reign, the feudal independence had so completely yielded, that the court began to give into a new policy, which was ever after pursued; that of maintaining the dignity and privileges of the noble class against those attacks which wealth and liberty encouraged the plebeians to make upon them.

Maritime towns peculiarly independent.

The maritime towns of the south of France entered into separate alliances with foreign states; as Narbonne with Genoa in 1166, and Montpellier in the next century. At the death of Raymond VII., Avignon, Arles, and Marseilles affected to set up republican governments; but they were soon brought into subjection (3). The independent character of maritime towns was not peculiar to those of the southern provinces. Edward II. and Edward III. negotiated, and entered into alliances with the towns of Flanders, to which neither their count, nor the king of France were parties (4). Even so late as the reign of Louis XI., the duke of Burgundy did not hesitate to address the citizens of Rouen, in consequence of the capture of some ships, as if they had formed an independent state (5). This evidently arose out of the ancient customs of private warfare, which, long after they were repressed by a stricter police at home, continued with lawless violence on the ocean, and gave a character of piracy to the commercial enterprize of the middle ages.

Military service of feudal tenants commuted for money.

Notwithstanding the forces which in opposite directions assailed the feudal system, from the enhancement of royal prerogative, and the elevation of the chartered

(1) One of the most remarkable privileges of chartered towns was that of conferring freedom on runaway serfs, if they were not reclaimed by their masters within a certain time. This was a pretty general law. Si quis nativus quietè per unum annum et unum diem in aliquâ villâ privilegiatâ manserit, ita quod in eorum communem gyldam tanquam civis receptus fuerit, eo ipso à villenagio liberabitur. Glanvil. l. v. c. 5. The cities of Languedoc had the same privilege. Vaissette, t. iii. p. 528, 530. And the editor of the Ordonnances speaks of it as general, p. 44. A similar custom was established in Germany; but the term of prescription was, in some places at least, much longer than a year and a day. Pfeffel, t. i. p. 294.

(2) Martenne, Thesaur. Anecd. t. i. p. 1515.

(3) Velly, t. iv. p. 446.; t. v. p. 97.

(4) Rymer, t. iv. passim.

(5) Garnier, t. xvii. p. 396.

towns, its resistance would have been much longer, but for an intrinsic decay. No political institution can endure, which does not rivet itself to the hearts of men by ancient prejudice, or acknowledged interest. The feudal compact had originally much of this character. Its principle of vitality was warm and active. In fulfilling the obligations of mutual assistance and fidelity by military service, the energies of friendship were awakened, and the ties of moral sympathy superadded to those of positive compact. While private wars were at their height, the connexion of lord and vassal grew close and cordial, in proportion to the keenness of their enmity towards others. It was not the object of a baron to disgust and impoverish his vavassors by enhancing the profits of seigniory; for there was no rent of such price as blood, nor any labour so serviceable as that of the sword.

But the nature of feudal obligation was far better adapted to the partial quarrels of neighbouring lords than to the wars of kingdoms. Customs, founded upon the poverty of the smaller gentry, had limited their martial duties to a period never exceeding forty days, and diminished according to the subdivisions of the fief. They could undertake an expedition, but not a campaign; they could burn an open town, but had seldom leisure to besiege a fortress. Hence, when the kings of France and England were engaged in wars, which, on our side at least, might be termed national, the inefficiency of the feudal militia became evident. It was not easy to employ the military tenants of England upon the frontiers of Normandy and the Isle of France, within the limits of their term of service. When, under Henry II. and Richard I., the scene of war was frequently transferred to the Garonne or the Charente, this was still more impracticable. The first remedy to which sovereigns had recourse, was to keep their vassals in service after the expiration of their forty days, at a stipulated rate of pay (1). But this was frequently neither convenient to the tenant, anxious to return back to his household, nor to the king, who could not readily defray the charges of an army (2). Something was to be devised more adequate to the exigency, though less suitable to the feudal spirit. By the feudal law, the fief was, in strictness, forfeited by neglect of attendance upon the lord's expedition. A milder usage introduced a fine, which, however, was generally rather heavy, and assessed at discretion. An instance of this kind has been noticed in an earlier part of the present chapter, from the muster-roll of Philip the Bold's expedition against the count de Foix. The first Norman kings of England made these amercements very oppressive. But when a pecuniary payment became

(1) Du Cange, et Carpentier, voc. Hostis.

(2) There are several instances where armies broke up, at the expiration of their limited term of service, in consequence of disagreement with the sovereign. Thus, at the siege of Avignon in 1226, Theobald count of Champagne retired with his troops, that he might not promote the king's designs upon Languedoc. At that of Angers in 1230, nearly the same thing occurred. M. Paris, p. 308.

the regular course of redeeming personal service, which, under the name of escuage, may be referred to the reign of Henry II., it was essential to liberty, that the military tenant should not lie at the mercy of the crown (1). Accordingly, one of the most important provisions contained in the Magna Charta of John, secures the assessment of escuage in parliament. This is not renewed in the charter of Henry III., but the practice during his reign was conformable to its spirit.

The feudal military tenures had superseded that earlier system of public defence, which called upon every man, and especially every land-holder, to protect his country (2). The relations of a vassal came in place of those of a subject and a citizen. This was the revolution of the ninth century. In the twelfth and thirteenth, another innovation rather more gradually prevailed, and marks the third period in the military history of Europe. Mercenary troops were substituted for the feudal militia. Undoubtedly there could never have been a time, when valour was not to be purchased with money; nor could any employment of surplus wealth be more natural either to the ambitious or the weak. But we cannot expect to find numerous testimonies of facts of this description (3). In public national history, I am aware of no instance of what may be called a regular army, (unless we consider the Antrustiones of the Merovingian kings as such,) more ancient than the body guards, or huscarles, of Canute the Great. These select troops amounted to six thousand

Employment of mercenary troops.

(1) Madox, Hist. of Exchequer, c. 16., conceives that escuage may have been levied by Henry I.; the earliest mention of it, however, in a record, is under Henry II., in 1159. Littleton's Hist. of Henry II. vol. iv. p. 13.

(2) Every citizen, however extensive may be his privileges, is naturally bound to repel invasion. A common rising of the people in arms, though not always the most convenient mode of resistance, is one to which all governments have a right to resort. Volumus, says Charles the Bald, ut cujuscumque nostrûm homo, in cujuscumque regno sit, cum seniore suo in hostem, vel aliis suis utilitatibus, pergat; nisi talis regni invasio, quam *Lantweri* dicunt, (quod absit) acciderit, ut omnis populus illius regni ad eam repellendam communiter pergat. Baluzii Capitularia, t. ii. p. 44. This very ancient mention of the *Landwehr* or insurrectional militia, so signally called forth in the present age, will strike the reader. The obligation of bearing arms in defensive war was peculiarly incumbent on the freeholder, or alodialist. It made part of the trinoda necessitas, in England, erroneously confounded by some writers with a feudal military tenure. But when these latter tenures became nearly universal, the original principles of public defence were almost obliterated; and I know not how far alodial proprietors, where they existed, were called upon for service. Kings did not however always dispense with such aid as the lower people could supply. Louis the Fat called out the militia of towns and parishes under their priests, who marched at their head, though they did not actually command them in battle. In the charters of incorporation which towns received, the number of troops required was usually expressed. These formed the infantry of the French armies, perhaps more numerous than formidable to an enemy. In the war of the same prince with the emperor Henry V., all the population of the frontier provinces was called out; for the militia of the counties of Rheims and Chalons is said to have amounted to sixty thousand men. Philip IV. summoned one foot-soldier for every twenty hearths to take the field after the battle of Courtrai. (Daniel, Hist. de la Milice Françoise. Velly, t. iii. p. 62.; t. viii. p. 287.) Commissions of array, either to call out the whole population, or, as was more common, to select the most serviceable by forced impressment, occur in English records from the reign of Edward I. (Stuart's View of Society, p. 400.); and there are even several writs directed to the bishops, enjoining them to cause all ecclesiastical persons to be arrayed and armed on account of an expected invasion. Rymer, t. vi. p. 726. (46 E. III.) t. vii. p. 162. (1. R. II.) and t. viii. p. 270. (3 H. IV.)

(3) The preface to the eleventh volume of Recueil des Historiens, p. 232., notices the word solidarii, for hired soldiers, as early as 1030. It was probably unusual at that time; though in Roger Hoveden, Ordericus Vitalis, and other writers of the twelfth century, it occurs not very unfrequently. We may perhaps conjecture the abbots, as both the richest and the most defenceless, to have been the first who availed themselves of mercenary valour.

men, on whom he probably relied to ensure the subjection of England. A code of martial law compiled for their regulation is extant in substance; and they are reported to have displayed a military spirit of mutual union, of which their master stood in awe (1). Harold II. is also said to have had Danish soldiers in pay. But the most eminent example in that age of a mercenary army is that by whose assistance William achieved the conquest of England. Historians concur in representing this force to have consisted of sixty thousand men. He afterwards hired soldiers from various regions to resist an invasion from Norway. William Rufus pursued the same course. Hired troops did not, however, in general, form a considerable portion of armies, till the wars of Henry II. and Philip Augustus. Each of these monarchs took into pay large bodies of mercenaries, chiefly, as we may infer from their appellation of Brabançons, enlisted from the Netherlands. These were always disbanded on cessation of hostilities; and unfit for any habits but of idleness and licence, oppressed the peasantry and ravaged the country without controul. But their soldier-like principles of indiscriminate obedience, still more than their courage and field discipline, rendered them dear to kings, who dreaded the free spirit of a feudal army. It was by such a foreign force, that John saw himself on the point of abrogating the Great Charter, and reduced his barons to the necessity of tendering his kingdom to a prince of France (2).

It now became manifest that the probabilities of war inclined to the party who could take the field with selected and experienced soldiers. The command of money was the command of armed hirelings, more sure and steady in battle, as we must confess with shame, than the patriot citizen. Though the nobility still composed in a great degree the strength of an army, yet they served in a new character; their animating spirit was that of chivalry, rather than of feudal tenure; their connexion with a superior was personal rather than territorial. The crusades had probably a material tendency to effectuate this revolution, by substituting, what was inevitable in those expeditions, a voluntary stipendiary service for one of absolute obligation (3). It is the opinion of Daniel, that in the

(1) For these facts, of which I remember no mention in English history, I am indebted to the Danish collection of Langebek, Scriptores Rerum Danicarum Medii Ævi. Though the Leges Castrenses Canuti Magni, published by him, t. iii. p. 141., are not in their original statutory form, they proceed from the pen of Sweno, the earliest Danish historian, who lived under Waldemar I., less than a century and a half after Canute. I apply the word huscarle, familiar in Anglo-Saxon documents, to these military retainers, on the authority of Langebek in another place, t. ii. p. 434. The object of Canute's institutions was to produce an uniformity of discipline and conduct among his soldiers, and thus to separate them more decidedly from the people. They were distinguished by their dress and golden ornaments. Their manners towards each other were regulated; quarrels and abusive words subjected to a penalty. All disputes, even respecting lands, were settled among themselves at their general parliament. A singular story is told, which, if false, may still illustrate the traditionary character of these guards; that Canute having killed one of their body in a fit of anger, it was debated whether the king should incur the legal penalty of death; and this was only compromised by his kneeling on a cushion before the assembly, and awaiting their permission to rise. t. iii. p. 150.

(2) Matt. Paris.

(3) Joinville, in several passages, intimates that most of the knights serving in St. Louis's crusade

thirteenth century all feudal tenants received pay even during their prescribed term of service (1). This does not appear consonant to the law of fiefs; yet their poverty may often have rendered it impossible to defray the cost of equipment on distant expeditions. A large proportion of the expense must in all cases have fallen upon the lord; and hence that perpetually increasing taxation, the effects whereof we have lately been investigating.

A feudal army, however, composed of all tenants in chief and their vassals, still presented a formidable array. It is very long before the paradox is generally admitted, that numbers do not necessarily contribute to the intrinsic efficiency of armies. Philip IV. assembled a great force, by publishing the arriere-ban, or feudal summons, for his unhappy expedition against the Flemings. A small and more disciplined body of troops would not, probably, have met with the discomfiture of Courtray. Edward I. and Edward II. frequently called upon those who owed military service, in their invasions of Scotland (2). But in the French wars of Edward III. the whole, I think, of his army served for pay, and was raised by contract with men of rank and influence, who received wages for every soldier according to his station and the arms he bore. The rate of pay was so remarkably high, that unless we imagine a vast profit to have been intended for the contractors, the private lancers and even archers must have been chiefly taken from the middling classes, the smaller gentry, or rich yeomanry, of England (3). This part of Edward's military system was probably a leading cause of his superiority over the French, among whom the feudal tenantry were called into the field, and swelled their unwieldy armies at Crecy and Poitiers. Both parties, however, in this war employed mercenary troops. Philip had 15,000 Italian crossbow-men at Crecy. It had for some time before become the trade of soldiers of fortune, to enlist under leaders of the same description as themselves in companies of adventure, passing from one service to another, unconcerned as to the cause in which they were retained. These military adventurers played a more remarkable part in Italy than in France, though not a little troublesome to the latter country. The feudal tenures had at least furnished a royal native militia, whose duties, though much limited in the extent,

received pay, either from their superior lord, if he were on the expedition, or from some other, into whose service they entered for the time. He set out himself with ten knights, whom he afterwards found it difficult enough to maintain. Collection des Mémoires, t. i. p. 49., and t. ii. p. 53.

(1) Histoire de la Milice Françoise, p. 84.

The use of mercenary troops prevailed much in Germany during the thirteenth century. Schmidt, t. iv. p. 89. In Italy, it was also very common; though its general adoption is to be referred to the commencement of the succeeding age.

(2) Rymer, t. iii. p. 173. 189. 199. et alibi sæpius.

(3) Many proofs of this may be adduced from Rymer's Collection. The following is from Brady's History of England, vol. ii. Appendix, p. 86. The wages allowed by contract, in 1346, were for an earl, 6s. 8d. per day; for barons and bannerets, 4s.; for knights, 2s.; for squires, 1s.; for archers and hobelers (light cavalry), 6d.; for archers on foot, 3d.; for Welshmen, 2d. These sums, multiplied by about 24, to bring them on a level with the present value of money, will show the pay to have been extremely high. The cavalry, of course, furnished themselves with horses and equipments, as well as arms, which were very expensive. See too Chap. i. p. 53 of this volume.

were defined by usage, and enforced by principle. They gave place in an evil hour for the people, and eventually for sovereigns, to contracts with mutinous hirelings, frequently strangers, whose valour in the day of battle inadequately redeemed their bad faith and vexatious rapacity. France, in her calamitous period under Charles VI. and Charles VII., experienced the full effects of military licentiousness. At the expulsion of the English, robbery and disorder were substituted for the more specious plundering of war. Perhaps few measures have ever been more popular, as few certainly have been more politic, than the establishment of regular companies of troops by an ordinance of Charles VII., in 1444 (1). These may justly pass for the first example of a standing army in Europe; though some Italian princes had retained troops constantly in their pay, but prospectively to hostilities, which were seldom long intermitted. Fifteen companies were composed each of a hundred men at arms, or lancers, and, in the language of that age, the whole body was one thousand five hundred lances. But each lancer had three archers, a coutiller, or soldier armed with a knife, and a page or valet attached to him, all serving on horseback; so that the fifteen companies amounted to nine thousand cavalry (2). From these small beginnings, as they must appear in modern times, arose the regular army of France, which every succeeding king was solicitous to augment. The ban was sometimes convoked, that is, the possessors of fiefs were called upon for military service in subsequent ages; but with more of ostentation than real efficiency.

Establishment of a regular force by Charles VII.

The feudal compact, thus deprived of its original efficacy, soon lost the respect and attachment which had attended it. Homage and investiture became unmeaning ceremonies; the incidents of relief and aid were felt as burthensome exactions. And indeed the rapacity with which these were levied, especially by our Norman sovereigns and their barons, was of itself sufficient to extinguish all the generous feelings of vassalage. Thus galled, as it were, by the armour which he was compelled to wear, but not to use, the military tenant of England looked no longer with contempt upon the owner of land in socage, who held his estate with almost the immunities of an alodial proprietor. But the profits which the crown reaped from wardships, and perhaps the prejudices of lawyers, prevented the abolition of military tenures, till the restoration of Charles II. In France, the fiefs of noblemen were very unjustly exempted from all territorial taxation; though the tailles of later times had, strictly speaking, only superseded the aids to which they had been always liable. This distinction, it is well known, was not annihilated till

Decay of feudal principles.

(1) The estates at Orleans in 1439 had advised this measure, as is recited in the preamble of the ordinance. Ordonnances des Rois, t. xii. p. 312.

(2) Daniel, Hist. de la Milice Françoise, p. 266. Villaret, Hist. de France, t. xv. p. 395.

that event which annihilated all distinctions, the French revolution.

It is remarkable, that, although the feudal system established in England upon the conquest broke in very much upon our ancient Saxon liberties; though it was attended with harsher servitudes than in any other country, particularly those two intolerable burthens, wardship and marriage; yet it has in general been treated with more favour by English than French writers. The hardiness with which the ancient barons resisted their sovereign, and the noble struggles which they made for civil liberty, especially in that Great Charter, the basement, at least, if not the foundation, of our free constitution, have met with a kindred sympathy in the bosoms of Englishmen; while from an opposite feeling, the French have been shocked at that aristocratic independence, which cramped the prerogatives, and obscured the lustre, of their crown. Yet it is precisely to this feudal policy, that France is indebted for that which is ever dearest to her children; their national splendour and power. That kingdom would have been irretrievably dismembered in the tenth century, if the laws of feudal dependence had not preserved its integrity. Empires of unwieldy bulk, like that of Charlemagne, have several times been dissolved by the usurpation of provincial governors, as is recorded both in ancient history and in that of the Mahometan dynasties in the East. What question can there be, that the powerful dukes of Guienne, or counts of Toulouse, would have thrown off all connexion with the crown of France, when usurped by one of their equals, if the slight dependence of vassalage had not been substituted for legitimate subjection to a sovereign?

It is the previous state of society under the grand-children of Charlemagne, which we must always keep in mind, if we would appreciate the effects of the feudal system upon the welfare of mankind. The institutions of the eleventh century must be compared with those of the ninth, not with the advanced civilization of modern times. If the view that I have taken of those dark ages is correct, the state of anarchy, which we usually term feudal, was the natural result of a vast and barbarous empire feebly administered, and the cause, rather than effect, of the general establishment of feudal tenures. These, by preserving the mutual relations of the whole, kept alive the feeling of a common country and common duties; and settled, after the lapse of ages, into the free constitution of England, the firm monarchy of France, and the federal union of Germany.

General estimate of the advantages and evils resulting from the feudal system.

The utility of any form of polity may be estimated, by its effects upon national greatness and security, upon civil liberty and private rights, upon the tranquillity and order of society, upon the increase and diffusion of wealth, or upon the general tone of moral sentiment and energy. The feudal constitution was certainly, as has been

observed already, little adapted for the defence of a mighty kingdom, far less for schemes of conquest. But as it prevailed alike in several adjacent countries, none had any thing to fear from the military superiority of its neighbours. It was this inefficiency of the feudal militia, perhaps, that saved Europe during the middle ages from the danger of universal monarchy. In times, when princes had little notion of confederacies for mutual protection, it is hard to say, what might not have been the successes of an Otho the Great, a Frederic Barbarossa, or a Philip Augustus, if they could have wielded the whole force of their subjects whenever their ambition required. If an empire equally extensive with that of Charlemagne, and supported by military despotism, had been formed about the twelfth or thirteenth centuries, the seeds of commerce and liberty, just then beginning to shoot, would have perished: and Europe, reduced to a barbarous servitude, might have fallen before the free barbarians of Tartary.

If we look at the feudal polity as a scheme of civil freedom, it bears a noble countenance. To the feudal law it is owing, that the very names of right and privilege were not swept away, as in Asia, by the desolating hand of power. The tyranny which, on every favourable moment, was breaking through all barriers, would have rioted without controul, if, when the people were poor and disunited, the nobility had not been brave and free. So far as the sphere of feudality extended, it diffused the spirit of liberty, and the notions of private right. Everyone, I think, will acknowledge this, who considers the limitations of the services of vassalage, so cautiously marked in those law-books which are the records of customs, the reciprocity of obligation between the lord and his tenant, the consent required in every measure of a legislative or a general nature, the security, above all, which every vassal found in the administration of justice by his peers, and even (we may in this sense say) in the trial by combat. The bulk of the people, it is true, were degraded by servitude, but this had no connexion with the feudal tenures.

The peace and good order of society were not promoted by this system. Though private wars did not originate in the feudal customs, it is impossible to doubt, that they were perpetuated by so convenient an institution, which indeed owed its universal establishment to no other cause. And as predominant habits of warfare are totally irreconcileable with those of industry, not merely by the immediate works of destruction which render its efforts unavailing, but through that contempt of peaceful occupations which they produce, the feudal system must have been intrinsically adverse to the accumulation of wealth, and the improvement of those arts, which mitigate the evils or abridge the labours of mankind.

But as the school of moral discipline, the feudal institutions were

perhaps most to be valued. Society had sunk, for several centuries after the dissolution of the Roman empire, into a condition of utter depravity; where, if any vices could be selected as more eminently characteristic than others, they were falsehood, treachery, and ingratitude. In slowly purging off the lees of this extreme corruption, the feudal spirit exerted its ameliorating influence. Violation of faith stood first in the catalogue of crimes, most repugnant to the very essence of a feudal tenure, most severely and promptly avenged, most branded by general infamy. The feudal law-books breathe throughout a spirit of honourable obligation. The feudal course of jurisdiction promoted, what trial by peers is peculiarly calculated to promote, a keener feeling and readier perception of moral as well as of leading distinctions. And as the judgment and sympathy of mankind are seldom mistaken, in these great points of veracity and justice, except through the temporary success of crimes, or the want of a definite standard of right, they gradually recovered themselves, when law precluded the one, and supplied the other. In the reciprocal services of lord and vassal, there was ample scope for every magnanimous and disinterested energy. The heart of man, when placed in circumstances which have a tendency to excite them, will seldom be deficient in such sentiments. No occasions could be more favourable than the protection of a faithful supporter, or the defence of a beneficent suzerain, against such powerful aggression, as left little prospect except of sharing in his ruin.

From these feelings engendered by the feudal relation has sprung up the peculiar sentiment of personal reverence and attachment towards a sovereign, which we denominate loyalty; alike distinguishable from the stupid devotion of eastern slaves, and from the abstract respect with which free citizens regard their chief magistrate. Men who had been used to swear fealty, to profess subjection, to follow, at home and in the field, a feudal superior and his family, easily transferred the same allegiance to the monarch. It was a very powerful feeling, which could make the bravest men put up with slights and ill treatment at the hands of their sovereign; or call forth all the energies of disinterested exertion for one whom they never saw, and in whose character there was nothing to esteem. In ages when the rights of the community were unfelt, this sentiment was one great preservative of society; and, though collateral or even subservient to more enlarged principles, it is still indispensable to the tranquillity and permanence of every monarchy. In a moral view, loyalty has scarcely perhaps less tendency to refine and elevate the heart than patriotism itself; and holds a middle place in the scale of human motives, as they ascend from the grosser inducements of self-interest, to the furtherance of general happiness and conformity to the purposes of infinite Wisdom.

CHAPTER III.

THE HISTORY OF ITALY, FROM THE EXTINCTION OF THE CARLOVINGIAN EMPERORS TO THE INVASION OF NAPLES BY CHARLES VIII.

PART I.

State of Italy after the Death of Charles the Fat—Coronation of Otho the Great—State of Rome — Conrad II.—Union of the Kingdom of Italy with the Empire—Establishment of the Normans in Naples and Sicily—Roger Guiscard—Rise of the Lombard Cities—They gradually become more independent of the Empire—Their internal Wars—Frederic Barbarossa—Destruction of Milan—Lombard League—Battle of Legnano—Peace of Constance—Temporal Principality of the Popes—Guelf and Ghibelin Factions—Otho IV. —Frederic II.—Arrangement of the Italian Republics—Second Lombard War—Extinction of the House of Swabia—Causes of the Success of Lombard Republics—Their Prosperity—and Forms of Government—Contentions between the Nobility and People —Civil Wars—Story of Giovanni di Vicenza.

State of Italy at the end of the ninth century.

At the death of Charles the Fat in 888, that part of Italy which acknowledged the supremacy of the western empire was divided, like France and Germany, among a few powerful vassals, hereditary governors of provinces (1). The

(1) The authorities upon which this chapter is founded, and which do not always appear at the foot of the page, are chiefly the following. 1. Muratori's Annals of Italy (twelve volumes in 4to. or eighteen in 8vo.) comprehend a summary of its history from the beginning of the Christian æra to the peace of Aix la Chapelle. The volumes relating to the middle ages, into which he has digested the original writers contained in his great collection, Scriptores Rerum Italicarum, are by much the best; and of these, the part which extends from the seventh or eighth to the end of the twelfth century is the fullest and most useful. Muratori's accuracy is in general almost implicitly to be trusted, and his plain integrity speaks in all his writings; but his mind was not philosophical enough to discriminate the wheat from the chaff, and his habits of life induced him to annex an imaginary importance to the dates of diplomas and other inconsiderable matters. His narrative presents a mere skeleton devoid of juices; and besides its intolerable aridity, it labours under that confusion which a merely chronological arrangement of concurrent and independent events must always produce. 2. The Dissertations on Italian Antiquities, by the same writer, may be considered either as one, or two works. In Latin, they form six volumes in folio, enriched with a great number of original documents. In Italian, they are freely translated by Muratori himself, abridged, no doubt, and without most of the original instruments, but well furnished with quotations, and abundantly sufficient for most purposes. They form three volumes in quarto. I have in general quoted only the number of the dissertation, on account of the variance between the Latin and Italian works: in cases where the page is referred to, I have indicated, by the title, which of the two I intend to vouch. 3. St. Marc, a learned and laborious Frenchman, has written a chronological abridgment of Italian history, somewhat in the manner of Hénault, but so strangely divided by several parallel columns in every page, that I could hardly name a book more inconvenient to the reader. His knowledge, like Muratori's, lay a good deal in points of minute inquiry; and he is chiefly to be valued in ecclesiastical history. The work descends only to the thirteenth century. 4. Denina's Rivoluzioni d' Italia, originally published in 1769, is a perspicuous and lively book, in which the principal circumstances are well selected. It is not perhaps free from errors in fact, and still less from those of opinion; but, till lately, I do not know from what source a general acquaintance with the history of Italy could have been so easily derived. 5. The publication of M. Sismondi's Histoire des Républiques Italiennes has thrown a blaze of light around the most interesting, at least in many respects, of European countries during the middle ages. I am happy to bear witness, so far as my own studies have enabled me, to the learning and diligence of this writer; qualities which the world is sometimes apt not to suppose, where they perceive so much eloquence and philosophy. I cannot express my opinion of M. Sismondi in this respect more strongly than by saying that his work has almost superseded the annals of Muratori; I mean from the twelfth century, before which period his labour hardly begins. Though doubtless not more accurate than Muratori, he has consulted a much more extensive list of authors; and, considered as a register of facts alone, his history is incomparably more useful. These are combined in so skilful a manner as to diminish, in a great degree, that inevitable confusion which arises from frequency of transition, and want of

principal of these were the dukes of Spoleto and Tuscany, the marquises of Ivrea, Susa, and Friuli. The great Lombard duchy of Benevento, which had stood against the arms of Charlemagne, and comprised more than half the present kingdom of Naples, had now fallen into decay, and was straitened by the Greeks in Apulia, and by the principalities of Capua and Salerno, which had been severed from its own territory, on the opposite coast (1). Though princes of the Carlovingian line continued to reign in France, their character was too little distinguished to challenge the obedience of Italy, already separated by family partitions from the Transalpine nations; and the only contest was among her native chiefs. One of these, Berenger, originally marquis of Friuli, or the March of Treviso, reigned for thirty-six years, but with continually disputed pretensions; and after his death the calamities of Italy were sometimes aggravated by tyranny, and sometimes by intestine war. The Hungarians desolated Lombardy; the southern coasts were infested by the Saracens, now masters of Sicily. Plunged in an abyss, from which she saw no other means of extricating herself, Italy lost sight of her favourite independence, and called in the assistance of Otho the First, king of Germany. Little opposition was made to this powerful monarch. Berenger II., the reigning sovereign of Italy, submitted to hold the kingdom of him as a fief (2). But some years afterwards, new disturbances arising, Otho descended from the Alps a second time, deposed Berenger, and received at the hands of Pope John XII. the imperial dignity, which had been suspended for nearly forty years.

And in the first part of the tenth.

Otho the Great, 961

Every ancient prejudice, every recollection, whether of Augustus or of Charlemagne, had led the Italians to annex the notion of sovereignty to the name of Roman Emperor; nor were Otho, or his two immediate descendants, by any means inclined to wave these supposed prerogatives which they were well able to enforce. Most of the Lombard princes acquiesced without apparent repugnance in the new German government, which was conducted by Otho the Great with much prudence and vigour, and occasionally

general unity. It is much to be regretted, that from too redundant details of unnecessary circumstances, and sometimes, if I may take the liberty of saying so, from unnecessary reflections, M. Sismondi has run into a prolixity which will probably intimidate the languid students of our age. It is the more to be regretted, because the History of Italian Republics is calculated to produce a good far more important than storing the memory with historical facts, that of communicating to the reader's bosom some sparks of the dignified philosophy, the love for truth and virtue, which lives along its eloquent pages. 6. To Muratori's collection of original writers, the Scriptores Rerum Italicarum, in twenty-four volumes in-folio, I have paid considerable attention; perhaps there is no volume of it, which I have not more or less consulted. But, after the annals of the same writer, and the work of M. Sismondi, I have not thought myself bound to repeat a laborious search into all the authorities upon which those writers depend. The utility, for the most part, of perusing original and contemporary authors, consists less in ascertaining mere facts; than in acquiring that insight into the spirit and temper of their times, which it is utterly impracticable for any compiler to impart. It would be impossible for me to distinguish what information I have derived from these higher sources; in cases, therefore, where no particular authority is named, I would refer to the writings of Muratori and Sismondi, especially the latter, as the substratum of the following chapter.

(1) Giannone, Istoria Civile di Napoli, l. vii. Sismondi, Hist. des Républiques Italiennes, t. i. p. 244.

(2) Muratori, A. D. 951. Denina, Rivoluzioni d'Italia, l. ix. c. 6.

with severity. The citizens of Lombardy were still better satisfied with a change, that ensured a more tranquil and regular administration than they had experienced under the preceding kings. But in one, and that the chief of Italian cities, very different sentiments were prevalent. We find, indeed, a considerable obscurity spread over the internal history of Rome, during the long period from the recovery of Italy by Belisarius to the end of the eleventh century. The popes appear to have possessed some measure of temporal power, even while the city was professedly governed by the exarchs of Ravenna, in the name of the Eastern empire. This power became more extensive after her separation from Constantinople. It was, however, subordinate to the undeniable sovereignty of the new imperial family, who were supposed to enter upon all the rights of their predecessors. There was always an imperial officer, or prefect, in that city, to render criminal justice; an oath of allegiance to the emperor was taken by the people; and upon any irregular election of a pope, a circumstance by no means unusual, the emperors held themselves entitled to interpose. But the spirit and even the institutions of the Romans were republican. Amidst the darkness of the tenth century, which no contemporary historian dissipates, we faintly distinguish the awful names of senate, consuls, and tribunes, the domestic magistracy of Rome. These shadows of past glory strike us at first with surprise; yet there is no improbability in the supposition, that a city so renowned and populous, and so happily sheltered from the usurpation of the Lombards, might have preserved, or might afterwards establish, a kind of municipal government, which it would be natural to dignify with those august titles of antiquity (1). During that anarchy which ensued upon the fall of the Carlovingian dynasty, the Romans acquired an independence which they did not deserve. The city became a prey to the most terrible disorders; the papal chair was sought for at best by bribery, or controuling influence, often by violence and assassination; it was filled by such men as naturally rise by such means, whose sway was precarious, and generally ended either in their murder or degradation. For many years the supreme pontiffs were forced upon the church by two women of high rank, but infamous reputation, Theodora and her daughter Marozia. The kings of Italy, whose election in a diet of Lombard princes and bishops at Roncaglia was not conceived to convey any pretension to the sovereignty of Rome, could never obtain any decided influence in papal elections, which were the object of struggling factions among the resident nobility. In this temper of the Romans, they were ill disposed to resume habits of obedience to a foreign sovereign. The next year after Otho's coronation, they rebelled, the pope at their head;

Internal state of Rome.

962

(1) Muratori, A.D. 967. 987. 1015. 1087. Sismondi, t. I. p. 155.

but were of course subdued without difficulty. The same republican spirit broke out whenever the emperors were absent in Germany, especially during the minority of Otho III., and directed itself against the temporal superiority of the pope. But when that emperor attained manhood, he besieged and took the city, crushing all resistance by measures of severity; and especially by the execution of the consul Crescentius, a leader of the popular faction, to whose instigation the tumultuous licence of Rome was principally ascribed (1).

Henri II. and Ardoin.

At the death of Otho III. without children, in 1002, the compact between Italy and the emperors of the house of Saxony was determined. Her engagement of fidelity was certainly not applicable to every sovereign whom the princes of Germany might raise to their throne. Accordingly Ardoin, marquis of Ivrea, was elected king of Italy. But a German party existed among the Lombard princes and bishops, to which his insolent demeanour soon gave a pretext for inviting Henry II., the new king of Germany, collaterally related to their late sovereign. Ardoin was deserted by most of the Italians, but retained his former subjects in Piedmont, and disputed the crown for many years with Henry, who passed very little time in Italy. During this period there was hardly any recognized government; and the Lombards became more and more accustomed, through necessity, to protect themselves, and to provide for their own internal police. Meanwhile the German nation had become odious to the Italians. The rude soldiery, insolent and addicted to intoxication, were engaged in frequent disputes with the citizens, wherein the latter, as is usual in similar cases, were exposed first to the summary vengeance of the troops, and afterwards to penal chastisement for sedition (2). In one of these tumults, at the entry of Henry II. in 1004, the city of Pavia was burned to the ground, which inspired its inhabitants with a constant animosity against that emperor. Upon his death in 1024, the Italians were disposed to break once more their connexion with Germany, which had elected as sovereign Conrad, duke of Franconia. They offered their crown to Robert king of France, and to William duke of Guienne, but neither of them was imprudent enough to involve himself in the difficult and faithless politics of Italy. It may surprise us that no candidate appeared from among her native princes. But it had been the dexterous policy of the Othos to weaken the great Italian fiefs, which were still rather considered as hereditary governments, than as absolute patrimonies, by separating districts from their jurisdiction, under inferior marquises and rural counts (3). The bishops were incapable of becoming

(1) Sismondi, t. i. p. 164., makes a patriot hero of Crescentius. But we know so little of the man or the times, that it seems better to follow the common tenor of history, without vouching for the accuracy of its representations.

(2) Muratori, A. D. 1027. 1037.

(3) Denina, l. ix. c. 11. Muratori, Antiq. Ital. Disser Annali d'Italia, A. D. 939.

competitors, and generally attached to the German party. The cities already possessed material influence, but were disunited by mutual jealousies. Since ancient prejudices, therefore, precluded a federate league of independent principalities and republics, for which perhaps the actual condition of Italy unfitted her, Eribert, archbishop of Milan, accompanied by some other chief men of Lombardy, repaired to Constance, and tendered the crown to Conrad, which he was already disposed to claim as a sort of dependency upon Germany. It does not appear that either Conrad, or his successors, were ever regularly elected to reign over Italy (1); but whether this ceremony took place or not, we may certainly date from that time the subjection of Italy to the Germanic body. It became an unquestionable maxim, that the votes of a few German princes conferred a right to the sovereignty of a country which had never been conquered, and which had never formally recognized this superiority (2). But it was an equally fundamental rule, that the elected king of Germany could not assume the title of Roman Emperor, until his coronation by the pope. The middle appellation of King of the Romans was invented as a sort of approximation to the imperial dignity. But it was not till the reign of Maximilian that the actual coronation at Rome was dispensed with, and the title of emperor taken immediately after the election.

Election of Conrad II. 1024

The period between Conrad of Franconia and Frederic Barbarossa, or from about the middle of the eleventh to that of the twelfth century, is marked by three great events in Italian history; the struggle between the empire and the papacy for ecclesiastical investitures, the establishment of the Norman kingdom in Naples, and the formation of distinct and nearly independent republics among the cities of Lombardy. The first of these will find a more appropriate place in a subsequent chapter, where I shall trace the progress of ecclesiastical power. But it produced a long and almost incessant state of disturbance in Italy; and should be mentioned at present, as one of the main causes which excited in that country a systematic opposition to the imperial authority.

Greek provinces of southern Italy.

The southern provinces of Italy, in the beginning of the eleventh century, were chiefly subject to the Greek empire, which had latterly recovered part of its losses, and exhibited some ambition and enterprize, though without any intrinsic vigour. They were governed by a lieutenant

(1) Muratori, A. D. 1026. It is said afterwards, p. 367., that he was à Romanis ad Imperatorem electus. The people of Rome therefore preserved their nominal right of concurring in the election of an emperor. Muratori, in another place, A. D. 1040, supposes that Henry III. was chosen king of Italy, though he allows that no proof of it exists; and there seems no reason for the supposition.

(2) Gunther, the poet of Frederic Barbarossa, expresses this not inelegantly:

Romani gloria regni
Nos penes est; quemcumque sibi Germania regem
Præficit, hunc dives submisso vertice Roma
Accipit, et verso Tiberim regit ordine Rhenus.
Gunther. Ligurinus ap. Struvium Corpus Hist. German. p. 266.

Yet it appears from Otho of Frisingen, an unquestionable authority, that some Italian nobles concurred, or at least were present and assisting, in the election of Frederic himself. l. ii. c. i.

styled Catapan (1), who resided at Bari in Apulia. On the Mediterranean coast, three duchies or rather republics, of Naples, Gaeta, and Amalfi, had for several ages preserved their connexion with the Greek empire, and acknowledged its nominal sovereignty. The Lombard principalities of Benevento, Salerno, and Capua, had much declined from their ancient splendour. The Greeks were, however, not likely to attempt any further conquests: the court of Constantinople had relapsed into its usual indolence; nor had they much right to boast of successes, rather due to the Saracen auxiliaries, whom they hired from Sicily. No momentous revolution apparently threatened the south of Italy, and least of all could it be anticipated from what quarter the storm was about to gather.

Settlement of the Normans at Aversa.

The followers of Rollo, who rested from plunder and piracy in the quiet possession of Normandy, became devout professors of the Christian faith, and particularly addicted to the custom of pilgrimage, which gratified their curiosity and spirit of adventure. In small bodies, well armed, on account of the lawless character of the countries through which they passed, the Norman pilgrims visited the shrines of Italy and even the Holy Land. Some of these, very early in the eleventh century, were engaged by a Lombard prince of Salerno against the Saracens, who had invaded his territory; and through that superiority of valour and perhaps of corporal strength, which this singular people seem to have possessed above all other Europeans, they made surprising havoc among the enemy (2). This exploit led to fresh engagements, and these engagements drew new adventurers from Normandy; they founded the little city of Aversa near Capua, and were employed by the Greeks against the Saracens of Sicily. But, though performing splendid services in this war, they were ill repaid by their ungrateful employers; and being by no means of a temper to bear with injury, they revenged themselves by a sudden invasion of Apulia. This province was speedily subdued, and divided among twelve Norman counts; but soon afterwards Robert Guiscard, one of twelve brothers, many of whom were renowned in these Italian wars, acquired the sovereignty; and adding Calabria to his conquests, put an end to the long dominion of the Eastern emperors in Italy (3). He reduced the principalities of Salerno and Benevento, in the latter instance sharing the spoil with the pope, who took the city to himself, while Robert retained the territory. His conquests in Greece, which he

1042

Conquests of Robert Guiscard.

1057

(1) Catapanus, from κατὰ πᾶν, one employed in general administration of affairs.

(2) Giannone, t. ii. p. 7. (edit. 1753.) I should observe, that St. Marc, a more critical writer in examination of facts than Giannone, treats this first adventure of the Normans as unauthenticated. Abrégé Chronologique, p. 900.

(3) The final blow was given to the Greek domination over Italy by the capture of Bari in 1071, after a siege of four years. It had for some time been confined to this single city. Muratori, St. Marc.

invaded with the magnificent design of overthrowing the Eastern empire, were at least equally splendid, though less durable. Roger, his younger brother, undertook meanwhile the romantic enterprize, as it appeared, of conquering the island of Sicily, with a small body of Norman volunteers. But the Saracens were broken into petty states, and discouraged by the bad success of their brethren in Spain and Sardinia. After many years of war, Roger became sole master of Sicily, and took the title of Count. The son of this prince, upon the extinction of Robert Guiscard's posterity, united the two Norman sovereignties, and subjugating the free republics of Naples and Amalfi, and the principality of Capua, established a boundary which has hardly been changed since his time (1).

1061

1127

Papal investitures of Naples.

The first successes of these Norman leaders were viewed unfavourably by the popes. Leo IX. marched in person against Robert Guiscard with an army of German mercenaries, but was beaten and made prisoner in this unwise enterprize, the scandal of which nothing but good fortune could have lightened. He fell, however, into the hands of a devout people, who implored his absolution for the crime of defending themselves; and whether through gratitude, or as the price of his liberation, invested them with their recent conquests in Apulia, as fiefs of the Holy See. This investiture was repeated and enlarged, as the popes, especially in their contention with Henry IV. and Henry V., found the advantage of using the Normans as faithful auxiliaries. Finally, Innocent II., in 1139, conferred upon Roger the title of king of Sicily. It is difficult to understand by what pretence these countries could be claimed by the see of Rome in sovereignty, unless by virtue of the pretended donation of Constantine, or that of Louis the Debonair, which is hardly less suspicious (2); and least of all how Innocent II. could surrender the liberties of the city of Naples, whether that was considered as an independent republic, or as a portion of the Greek empire. But the Normans, who had no title but their swords, were naturally glad to give an appearance of legitimacy to their conquest; and the kingdom of Naples, even in the hands of the most powerful princes in Europe, never ceased to pay a feudal acknowledgment to the chair of St. Peter.

Progress of the Lombard cities.

The revolution which time brought forth on the opposite side of Italy were still more interesting. Under the Lombard and French princes, every city with its adjacent district was subject to the government and jurisdiction of a count, who was himself subordinate to the duke or marquis of the province.

(1) M. Sismondi has excelled himself in describing the conquest of Amalfi and Naples by Roger Guiscard; (t. i. c. 4.) warming his imagination with visions of liberty and virtue in those obscure republics, which no real history survives to dispel.

(2) Muratori presumes to suppose, that the interpolated, if not spurious, grants of Louis the Debonair, Otho I. and Henry II., to the See of Rome were promulgated about the time of the first concessions to the Normans, in order to give the popes a colourable pretext to dispose of the southern provinces of Italy. A. D. 1059.

From these counties it was the practice of the first German emperors to dismember particular towns or tracts of country, granting them upon a feudal tenure to rural lords, by many of whom also the same title was assumed. Thus by degrees the authority of the original officers was confined almost to the walls of their own cities; and in many cases the bishops obtained a grant of the temporal government, and exercised the functions which had belonged to the count (1).

It is impossible to ascertain the time at which the cities of Lombardy began to assume a republican form of government, or to trace with precision the gradations of their progress. The last historian of Italy asserts, that Otho the First erected them into municipal communities, and permitted the election of their magistrates; but of this he produces no evidence; and Muratori, from whose authority it is rash to depart without strong reasons, is not only silent about any charters, but discovers no express unequivocal testimonies of a popular government for the whole eleventh century (2). The first appearance of the citizens acting for themselves, is in a tumult at Milan, in 991, when the archbishop was expelled from the city (3). But this was a transitory ebullition, and we must descend lower for more specific proofs. It is possible that the disputed succession of Ardoin and Henry, at the beginning of the eleventh age, and the kind of interregnum which then took place, gave the inhabitants an opportunity of choosing magistrates, and of sharing in public deliberations. A similar relaxation indeed of government in France had exposed the people to greater servitude, and established a feudal aristocracy. But the feudal tenures seem not to have produced in Italy that systematic and regular subordination which existed in France during the same period; nor were the mutual duties of the relation between lord and vassal so well understood or observed. Hence we find not only disputes, but actual civil war between the lesser gentry or vavassors, and the higher nobility, their immediate superiors. These differences were adjusted by Conrad the Salic, who published a remarkable edict in 1037, by which the feudal law of Italy was reduced to more certainty (4). From this disunion among the members of the feudal confederacy, it was more easy for the citizens to render themselves secure against its dominion. The cities too of Lombardy were far more populous and better defended than those of France; they had learned to stand sieges in the Hungarian invasions of the tenth century, and had acquired the right of protecting themselves by strong fortifications. Those which had been placed under the temporal government of their bishops had peculiar advantages in struggling for emancipation (5). This cir-

(1) Muratori, Antiquit. Italiæ, Dissert. 8. Annali d' Italia, A. D. 989. Antichità Estensi, p. 26.

(2) Sismondi, t. i. p. 97. 334. Muratori, Dissertation 49.

(3) Muratori, Annali d' Italia.

(4) Muratori, Annali d'Italia. St. Marc.

(5) The bishops seem to have become counts, or temporal governors, of their sees, about the end of the tenth, or before the middle of the eleventh century. Muratori, Diss. 8. Denina, l. ix. c. 11. St.

cumstance in the state of Lombardy I consider as highly important towards explaining the subsequent revolution. Notwithstanding several exceptions, a churchman was less likely to be bold and active in command than a soldier; and the sort of election which was always necessary, and sometimes more than nominal, on a vacancy of the see, kept up among the citizens a notion, that the authority of their bishop and chief magistrate emanated in some degree from themselves. In many instances, especially in the church of Milan, the earliest, perhaps, and certainly the most famous of Lombard republics, there occurred a disputed election; two, or even three, competitors claimed the archiepiscopal functions, and were compelled, in the absence of the emperors, to obtain the exercise of them by means of their own faction among the citizens (1).

These were the general causes, which, operating at various times during the eleventh century, seem gradually to have produced a republican form of government in the Italian cities. But this part of history is very obscure. The archives of all cities before the reign of Frederic Barbarossa have perished. For many years, there is a great deficiency of contemporary Lombard historians, and those of a later age, who endeavoured to search into the antiquities of their country, have found only some barren and insulated events to record. We perceive, however, throughout the eleventh century, that the cities were continually in warfare with each other. This, indeed, was according to the manners of that age, and no inference can absolutely be drawn from it as to their internal freedom. But it is observable, that their chronicles speak, in recording these transactions, of the people, and not of their leaders, which is the true republican tone of history. Thus, in the Annals of Pisa, we read, under the years 1002 and 1004, of victories gained by the Pisans over the people of Lucca; in 1006, that the Pisans and Genoese conquered Sardinia (2). These annals indeed are not by a contemporary

Marc, A. D. 1041. 1047. 1070. In Arnulf's History of Milan, written before the close of the latter age, we have a contemporary evidence. And from the perusal of that work I should infer, that the archbishop was, in the middle of the eleventh century, the chief magistrate of the city. But, at the same time, it appears highly probable, that an assembly of the citizens, or at least a part of the citizens, partook in the administration of public affairs. Muratori, Scriptores Rerum Italicarum, t. iv. p. 16. 22. 23., and particularly the last. In most cities to the eastward of the Tesino, the bishops lost their temporal authority in the twelfth century, though the archbishop of Milan had no small prerogatives, while that city was governed as a republic. But in Piedmont, they continued longer in the enjoyment of power. Vercelli and even Turin were almost subject to their respective prelates till the thirteenth century. For this reason among others, the Piedmontese cities are hardly to be reckoned among the republics of Lombardy. Denina, Istoria dell' Italia Occidentale, t. i. p. 191.

(1) Muratori, A. D. 1345. Sometimes the inhabitants of a city refused to acknowledge a bishop named by the emperor, as happened at Pavia and Asti about 1057. Arnulf, p. 22. This was, in other words, setting up themselves as republics. But the most remarkable instance of this kind occurred in 1070, when the Milanese absolutely rejected Godfrey, appointed by Henry IV., and after a resistance of several years, obliged the emperor to fix upon another person. The city had been previously involved in long and violent tumults which, though rather belonging to ecclesiastical than civil history, as they arose out of the endeavours made to reform the conduct and enforce the celibacy of the clergy, had a considerable tendency to diminish the archbishop's authority, and to give a republican character to the inhabitants. These proceedings are told at great length by St. Marc, t. iii. A. D. 1056—1077. Arnulf and Landulf are the original sources.

(2) Murat. Diss. 45. Arnulfus, the historian of Milan, makes no mention of any temporal counts, which seems to be a proof that there were none in any authority. He speaks always of Mediolanenses, Papienses, Ravenates, etc. This History was written about 1085, but relates to the earlier part of that century. That of Landulfus corroborates this supposition, which indeed is capable of proof

writer, nor perhaps of much authority. But we have an original account of a war that broke out in 1057, between Pavia and Milan, in which the citizens are said to have raised armies, made alliances, hired foreign troops, and in every respect acted like independent states (1). There was, in fact, no power left in the empire to controul them. The two Henrys IV. and V. were so much embarrassed during the quarrel concerning investitures, and the continual troubles of Germany, that they were less likely to interfere with the rising freedom of the Italian cities, than to purchase their assistance by large concessions. Henry IV. granted a charter to Pisa, in 1081, full of the most important privileges, promising even not to name any marquis of Tuscany without the people's consent (2); and it is possible that, although the instruments have perished, other places might obtain similar advantages. However this may be, it is certain that before the death of Henry V., in 1125, almost all the cities of Lombardy, and many among those of Tuscany, were accustomed to elect their own magistrates, and to act as independent communities in waging war and in domestic government (3).

Their acquisitions of territory.

The territory subjected originally to the count or bishop of these cities had been reduced, as I mentioned above, by numerous concessions to the rural nobility. But the new republics, deeming themselves entitled to all which their former governors had once possessed, began to attack their nearest neighbours, and to recover the sovereignty of all their ancient territory. They besieged the castles of the rural counts, and successively reduced them into subjection. They suppressed some minor communities, which had been formed in imitation of themselves by little towns belonging to their district. Sometimes they purchased feudal superiorities or territorial jurisdictions, and, according to a policy not unusual with the stronger party, converted the rights of property into those of government (4). Hence, at the middle of the twelfth century, we are assured by a contemporary writer, that hardly any nobleman could be found except the marquis of Montferrat, who had not submitted to some city (5). We may except also, I should presume, the families of Este and Malaspina, as well as that of Savoy. Muratori produces many charters of mutual compact between the nobles and the neighbouring cities; whereof one invariable article is, that the former should reside within the walls a certain number of months in the year (6). The rural nobility, thus deprived of the independence which had endeared their castles,

as to Milan and several other cities in which the temporal government had been legally vested in the bishops.

(1) Murat. Diss. 45. Arnulf, Hist. Mediolan. p. 22.

(2) Idem, Dissert. 45.

(3) Idem, Annali d' Ital. A. D. 1107.

(4) Il dominio utile delle città e de' villaggi era talvolta diviso fra due o più padroni, ossia che s' assegnassero a ciascuno diversi quartieri, o si dividessero i proventi della gabella, ovvero che l' uno signore godesse d' una spezie della giurisdizione, e l' altro d' un' altra. Denina, l. xii. c. 3. This produced a vast intricacy of titles, which was of course advantageous to those who wanted a pretext for robbing their neighbours.

(5) Otho Frisingens. l. ii. c. 13.

(6) Murat. Diss. 49.

imbibed a new ambition of directing the municipal government of the cities, which, during the first period of the republics, was chiefly in the hands of the superior families. It was the sagacious policy of the Lombards to invite settlers by throwing open to them the privileges of citizenship, and sometimes they even bestowed them by compulsion. Sometimes a city, imitating the wisdom of ancient Rome, granted these privileges to all the inhabitants of another (1). Thus the principal cities, and especially Milan, reached, before the middle of the twelfth century, a degree of population very far beyond that of the capitals of the great kingdoms. Within their strong walls and deep trenches, and in the midst of their well-peopled streets, the industrious dwelt secure from the licence of armed pillagers and the oppression of feudal tyrants. Artizans, whom the military landholders contemned, acquired and deserved the right of bearing arms for their own and the public defence (2). Their occupations became liberal, because they were the foundation of their political franchises; the citizens were classed in companies according to their respective crafts; each of which had its tribune or standard bearer (gonfalonier), at whose command, when any tumult arose or enemy threatened, they rushed in arms to muster in the market-place.

Their mutual animosities.

But, unhappily, we cannot extend the sympathy, which institutions so full of liberty create, to the national conduct of these little republics. Their love of freedom was alloyed by that restless spirit, from which a democracy is seldom exempt, of tyrannizing over weaker neighbours. They played over again the tragedy of ancient Greece, with all its circumstances of inveterate hatred, unjust ambition, and atrocious retaliation, though with less consummate actors upon the scene. Among all the Lombard cities, Milan was the most conspicuous, as well for power and population, as for the abuse of those resources by arbitrary and ambitious conduct. Thus in 1111, they razed the town of Lodi to the ground, distributing the inhabitants among six villages, and subjecting them to an unrelenting despotism (3). Thus in 1118, they commenced a war of ten years' duration with the little city of Como; but the surprising perseverance of its inhabitants procured for them better terms of capitulation, though they lost their original independence. The Cremonese treated so harshly the town of Crema, that it revolted from them, and put itself under the protection of Milan. Cities of more equal forces carried on intermi-

(1) Murat. Diss. 40.

(2) Otho Frisingensis ap. Murat. Scr. Rer. Ital. t. vi. p. 708. Ut etiam ad comprimendos vicinos materiâ non careant, inferioris ordinis juvenes, vel quoslibet contemptibilium etiam mechanicarum artium opifices, quos cæteras gentes ab honestioribus et liberioribus studiis tanquam pestem propellunt, ad militiæ cingulum, vel dignitatum gradus assumere non dedignantur. Ex quo factum est, ut cæteris orbis civitatibus, divitiis et potentiâ præemineant.

(3) The animosity between Milan and Lodi was of very old standing. It originated, according to Arnulf, in the resistance made by the inhabitants of the latter city to an attempt made by Archbishop Eribert to force a bishop of his own nomination upon them. The bloodshed, plunder, and conflagrations which had ensued, would, he says, fill a volume, if they were related at length. Scriptores Rerum Italic. t. iv. p. 16. And this is the testimony of a writer who did not live beyond 1085. Seventy years more either of hostility or servitude elapsed, before Lodi was permitted to respire.

nable hostilities by wasting each other's territory, destroying the harvests, and burning the villages.

Sovereignty of the emperors.

The sovereignty of the emperors, meanwhile, though not very effective, was in theory always admitted. Their name was used in public acts, and appeared upon the coin. When they came into Italy, they had certain customary supplies of provisions called fodrum regale, at the expense of the city where they resided; during their presence, all inferior magistracies were suspended, and the right of jurisdiction devolved upon them alone. But such was the jealousy of the Lombards, that they built the royal palaces without their gates; a precaution to which the emperors were compelled to submit. This was at a very early time a subject of contention between the inhabitants of Pavia and Conrad II., whose palace, seated in the heart of the city, they had demolished in a sedition, and were unwilling to rebuild in that situation (1).

Frederic Barbarossa.

Such was the condition of Italy when Frederic Barbarossa, duke of Swabia, and nephew of the last emperor, Conrad III., ascended the throne of Germany. His accession forms the commencement of a new period, the duration of which is about one hundred years, and which is terminated by the death of Conrad IV., the last emperor of the house of Swabia. It is characterized, like the former, by three distinguishing features in Italian history; the victorious struggle of the Lombard and other cities for independence, the final establishment of a temporal sovereignty over the middle provinces by the popes, and the union of the kingdom of Naples to the dominions of the house of Swabia.

In Frederic Barbarossa the Italians found a very different sovereign from the two last emperors, Lothaire and Conrad III., who had seldom appeared in Italy, and with forces quite inadequate to controul such insubordinate subjects. The distinguished valour and ability of this prince rendered a severe and arbitrary temper and a haughty conceit of his imperial rights more formidable. He believed, or professed to believe, the magnificent absurdity, that, as successor of Augustus, he inherited the kingdoms of the world. In the same right, he more powerfully, if not more rationally, laid claim to the entire prerogatives of the Roman emperors over their own subjects; and in this the professors of the civil law, which was now diligently studied, lent him their aid with the utmost servility. To such a disposition the self-government of the Lombard cities appeared mere rebellion. Milan, especially, the most renowned of them all, drew down upon herself his inveterate resentment. He found, unfortunately, too good a pretence in her behaviour towards Lodi. Two natives of that ruined city threw themselves at the emperor's feet, imploring him, as the ultimate source of justice, to redress the wrongs of their country. It is a striking proof of the terror inspired by Milan, that the consuls of Lodi disavowed the complaints

(1) Otho Frisingensis. p. 710. Muratori. A. D. 1027.

of their countrymen, and the inhabitants trembled at the danger of provoking a summary vengeance, against which the imperial arms seemed no protection (1). The Milanese, however, abstained from attacking the people of Lodi, though they treated with contempt the emperor's order to leave them at liberty. Frederic, meanwhile, came into Italy, and held a diet at Roncaglia, where complaints poured in from many quarters against the Milanese. Pavia and Cremona, their ancient enemies, were impatient to renew hostilities under the imperial auspices. Brescia, Tortona, and Crema were allies, or rather dependants, of Milan. Frederic soon took occasion to attack the latter confederacy. Tortona was compelled to surrender and levelled to the ground. But a feudal army was soon dissolved; the emperor had much to demand his attention at Rome, where he was on ill terms with Adrian IV.; and when the imperial troops were withdrawn from Lombardy, the Milanese rebuilt Tortona, and expelled the citizens of Lodi from their dwellings. Frederic assembled a fresh army, to which almost every city of Lombardy, willingly, or by force, contributed its militia. It is said to have exceeded a hundred thousand men. The Milanese shut themselves up within their walls; and perhaps might have defied the imperial forces, if their immense population, which gave them confidence in arms, had not exposed them to a different enemy. Milan was obliged by hunger to capitulate, upon conditions not very severe, if a vanquished people could ever safely rely upon the convention that testifies their submission.

Diet of Roncaglia. 1158

Frederic, after the surrender of Milan, held a diet at Roncaglia, where the effect of his victories was fatally perceived. The bishops, the higher nobility, the lawyers, vied with one another in exalting his prerogatives. He defined the regalian rights, as they were called, in such a manner as to exclude the cities and private proprietors from coining money, and from tolls or territorial dues, which they had for many years possessed. These, however, he permitted them to retain for a pecuniary stipulation. A more important innovation was the appointment of magistrates, with the title of Podestà, to administer justice, concurrently with the consuls; but he soon proceeded to abolish the latter office in many cities, and to throw the whole government into the hands of his own magistrates. He prohibited the cities from levying war against each other. It may be presumed, that he shewed no favour to Milan. The capitulation was set at nought in its most express provisions; a podestà was sent to supersede the consuls, and part of the territory taken away. Whatever might be the risk of resistance, and the Milanese had experience enough not to undervalue it, they were determined rather to see their liber-

(1) See an interesting account of these circumstances in the narrative of Otho Morena, a citizen of Lodi. Script. Rer. Ital. t. vi. p. 966. M. Sismondi, who reproaches Morena for partiality towards Frederic in the Milanese war, should have remembered the provocations of Lodi. Hist. des Républ. Ital. t. ii. p. 102.

ties at once overthrown, than gradually destroyed by a faithless tyrant. They availed themselves of the absence of his army to renew the war. Its issue was more calamitous than that of the last. Almost all Lombardy lay patient under subjection. The small town of Crema, always the faithful ally of Milan, stood a memorable siege against the imperial army; but the inhabitants were ultimately compelled to capitulate for their lives, and the vindictive Cremonese razed their dwellings to the ground (1). But all smaller calamities were forgotten, when the great city of Milan, worn out by famine rather than subdued by force, was reduced to surrender at discretion. Lombardy stood in anxious suspense to know the determination of Frederic respecting this ancient metropolis, the seat of the early Christian emperors, and second only to Rome in the hierarchy of the Latin church. A delay of three weeks excited fallacious hopes; but at the end of that time, an order was given to the Milanese to evacuate their habitations. The deserted streets were instantly occupied by the imperial army; the people of Pavia and Cremona, of Lodi and Como, were commissioned to revenge themselves on the respective quarters of the city assigned to them; and in a few days, the pillaged churches stood alone amidst the ruins of what had been Milan.

Capture and destruction of Milan.

1162 There was now little left of that freedom to which Lombardy had aspired; it was gone like a pleasant dream, and she awoke to the fears and miseries of servitude. Frederic obeyed the dictates of his vindictive temper, and of the policy usual among statesmen. He abrogated the consular regimen in some even of the cities which had supported him, and established his podestà in their place. The magistrate was always a stranger, frequently not even an Italian; and he came to his office with all those prejudices against the people he was to govern which cut off every hope of justice and humanity. The citizens of Lombardy, especially the Milanese, who had been dispersed in the villages adjoining their ruined capital, were unable to meet the perpetual demands of tribute. In some parts, it is said, two thirds of the produce of their lands, the only wealth that remained, were extorted from them by the imperial officers. It was in vain that they prostrated themselves at the feet of Frederic. He gave at the best only vague promises of redress; they were in his eyes rebels, his delegates had acted as faithful officers, whom, even if they had gone a little beyond his intentions, he could not be expected to punish.

But there still remained, at the heart of Lombardy, the strong principle of national liberty, imperishable among the perishable armies of her patriots, inconsumable in the conflagration of her ci-

(1) The siege of Crema is told at great length by Otho Morena; it is interesting, not only as a display of extraordinary, though unsuccessful, perseverance and intrepidity, but as the most detailed account of the methods used in the attack and defence of fortified places, before the introduction of artillery. Scrip. Rer. Ital. t. vi. p. 1032—1053.

ties (1). Those whom private animosities had led to assist the German conqueror, blushed at the degradation of their country, and at the share they had taken in it. A league was secretly formed, in which Cremona, one of the chief cities on the imperial side, took a prominent part. Those beyond the Adige, hitherto not much engaged in the disputes of central Lombardy, had already formed a separate confederacy, to secure themselves from encroachments, which appeared the more unjust as they had never borne arms against the emperor. Their first successes corresponded to the justice of their cause; Frederic was repulsed from the territory of Verona, a fortunate augury for the rest of Lombardy. These two clusters of cities, on the east and west of the Adige, now united themselves into the famous Lombard League, the terms of which were settled in a general diet. Their alliance was to last twenty years; during which they pledged themselves to mutual assistance against any one who should exact more from them than they had been used to perform from the time of Henry, to the first coming of Frederic into Italy; implying in this, the recovery of their elective magistracies, their rights of war and peace, and those lucrative privileges, which, under the name of regalian, had been wrested from them in the diet of Roncaglia (2).

League of Lombardy against Frederic. 1167.

1164

This union of the Lombard cities was formed at a very favourable juncture. Frederic had almost ever since his accession been engaged in open hostility with the see of Rome, and was pursuing the fruitless policy of Henry IV., who had endeavoured to substitute an antipope of his own faction for the legitimate pontiff. In the prosecution of this scheme, he had besieged Rome with a great army, which, the citizens resisting longer than he expected, fell a prey to the autumnal pestilence that visits the neighbourhood of that capital. The flower of German nobility was cut off by this calamity, and the emperor recrossed the Alps, entirely unable for the present to withstand the Lombard confederacy. Their first overt act of insurrection was the rebuilding of Milan; the confederate troops all joined in this undertaking; and the Milanese, still numerous, though dispersed and persecuted, revived as a powerful republic. Lodi was compelled to enter into the league; Pavia alone continued on the imperial side. As a check to Pavia, and to the marquis of Montferrat, the most potent of the independent nobility, the Lombards planned the erection of a new city, between the confines of these

(1) Quæ neque Dardanilis campis potuêre perire,
Nec cùm capta capi, nec cùm combusta cremari.
Ennius.

(2) For the nature and conditions of the Lombard league, besides the usual authorities, see Muratori's 48th dissertation. The words, à tempore Henrici Regis usque ad introitum Imperatoris Frederici, leave it ambiguous, which of the Henries was intended. Muratori thinks it was Henry IV., because the cities then began to be independent. It seems however natural, when a king is mentioned without any numerical designation, to interpret it of the last bearing that name; as we say King William, or William the Third. And certainly the liberties of Lombardy were more perfect under Henry V. than his father: besides which, the one reign might still be remembered, and the other rested in tradition. The question however is of little moment.

two enemies, in a rich plain to the south of the Po, and bestowed upon it, in compliment to the pope, Alexander III., the name of Alessandria. Though, from its hasty construction, Alessandria was, even in that age, deemed rude in appearance, it rapidly became a thriving and populous city (1). The intrinsic energy and resources of Lombardy were now made manifest. Frederic, who had triumphed by their disunion, was unequal to contend against their league. After several years of indecisive war, the emperor invaded the Milanese territory, but the confederates gave him battle and gained a complete victory at Legnano. Frederic escaped alone and disguised from the field, with little hope of raising a fresh army, though still reluctant from shame to acquiesce in the freedom of Lombardy. He was at length persuaded, through the mediation of the republic of Venice, to consent to a truce of six years, the provisional terms of which were all favourable to the league. It was weakened, however, by the defection of some of its own members; Cremona, which had never cordially united with her ancient enemies, made separate conditions with Frederic, and suffered herself to be named among the cities on the imperial side in the armistice. Tortona and even Alessandria followed the same course during the six years of its duration; a fatal testimony of unsubdued animosities, and omen of the calamities of Italy. At the expiration of the truce, Frederic's anxiety to secure the crown for his son overcame his pride, and the famous peace of Constance established the Lombard republics in real independence.

Battle of Legnano. 1176

Peace of Constance. 1183

By the treaty of Constance, the cities were maintained in the enjoyment of all the regalian rights, whether within their walls or in their district, which they could claim by usage. Those of levying war, of erecting fortifications, and of administering civil and criminal justice, were specially mentioned. The nomination of their consuls, or other magistrates, was left absolutely to the citizens; but they were to receive the investiture of their office from an imperial legate. The customary tributes of provision during the emperor's residence in Italy were preserved; and he was authorized to appoint in every city a judge of appeal in civil causes. The Lombard league was confirmed, and the cities were permitted to renew it at their own discretion; but they were to take every ten years an oath of fidelity to the emperor. This just compact preserved, along with every security for the liberties and welfare of the cities, as much of the imperial prerogatives as could be exercised by a foreign sovereign, consistently with the people's happiness (2).

(1) Alessandria was sirnamed, in derision, della paglia: from the thatch with which the houses were covered. Frederic was very desirous to change its name to Cæsarea, as it is actually called in the peace of Constance, being at that time on the imperial side. But it soon recovered its former appellation.

(2) Muratori, Antiquitates Italiæ, Diss. 50.

The successful insurrection of Lombardy is a memorable refutation of that system of policy to which its advocates gave the appellation of vigorous, and which they perpetually hold forth as the only means through which a disaffected people are to be restrained. By a certain class of statesmen, and by all men of harsh and violent disposition, measures of conciliation, adherence to the spirit of treaties, regard to ancient privileges, or to those rules of moral justice which are paramount to all positive right, are always treated with derision. Terror is their only specific, and the physical inability to rebel their only security for allegiance. But if the razing of cities, the abrogation of privileges, the impoverishment and oppression of a nation could assure its constant submission, Frederic Barbarossa would never have seen the militia of Lombardy arrayed against him at Legnano. Whatever may be the pressure upon a conquered people, there will come a moment of their recoil Nor is it material to alledge, in answer to the present instance, that the accidental destruction of Frederic's army by disease enabled the cities of Lombardy to succeed in their resistance. The fact may well be disputed; since Lombardy, when united, appears to have been more than equal to a contest with any German force that could have been brought against her; but, even if we admit the effect of this circumstance, it only exhibits the precariousness of a policy, which collateral events are always liable to disturb. Providence reserves to itself various means, by which the bonds of the oppressor may be broken; and it is not for human sagacity to anticipate, whether the army of a conqueror shall moulder in the unwholesome marshes of Rome, or stiffen with frost in a Russian winter.

The peace of Constance presented a noble opportunity to the Lombards of establishing a permanent federal union of small republics; a form of government congenial from the earliest ages to Italy, and that, perhaps, under which she is again destined one day to flourish. They were entitled by the provisions of that treaty to preserve their league, the basis of a more perfect confederacy, which the course of events would have emancipated from every kind of subjection to Germany (1). But dark long cherished hatreds, and that implacable vindictiveness, which, at least in former ages, distinguished the private manners of Italy, deformed her national character, which can only be the aggregate of individual passions. For revenge she threw away the pearl of great price, and sacrificed even the recollection of that liberty, which had stalked like a majestic spirit among the ruins of Milan (2). It passed away, that high

(1) Though there was no permanent diet of the Lombard league, the consuls and podestàs of the respective cities composing it occasionally met in congress, to deliberate upon measures of general safety. Thus assembled, they were called Rectores Societatis Lombardiæ. It is evident, that if Lombardy had continued in any degree to preserve the spirit of union, this congress might readily have become a permanent body, like the Helvetic diet, with as extensive powers as are necessary in a federal constitution. Muratori, Antichità Italiane, t. iii. p. 126. Dissert. 50. Sismondi, t. ii. p. 189.

(2) Anzi girar la libertà miral,
E baciar lieta ogni ruina, e dire:
Ruine sì, ma servitù non mai.

Gaetana Passerini (ossia piuttosto Giovan Battista Pastorini) in Mathias, Componimenti Lirici—vol. ii, p. 331.

disdain of absolute power, that steadiness and self-devotion, which raised the half-civilised Lombards of the twelfth century to the level of those ancient republics, from whose history our first notions of freedom and virtue are derived. The victim by turns of selfish and sanguinary factions, of petty tyrants, and of foreign invaders, Italy has fallen like a star from its place in heaven; she has seen her harvests trodden down by the horses of the stranger, and the blood of her children wasted in quarrels not their own; *Conquering or conquered*, in the indignant language of her poet, *still alike a slave* (1), a long retribution for the tyranny of Rome.

Affairs of Sicily.

Frederic did not attempt to molest the cities of Lombardy in the enjoyment of those privileges conceded by the treaty of Constance. His ambition was diverted to a new scheme for aggrandizing the house of Swabia, by the marriage of his eldest son Henry with Constance, the aunt and heiress of William II., king of Sicily. That kingdom, which the first monarch, Roger, had elevated to a high pitch of renown and power, fell into decay through the misconduct of his son William, sirnamed the Bad, and did not recover much of its lustre under the second William, though styled the Good. His death without issue was apparently no remote event, and Constance was the sole legitimate survivor of the royal family. It is a curious circumstance, that no hereditary kingdom appears absolutely to have excluded females from its throne, except that which, from its magnitude, was of all the most secure from falling into the condition of a province. The Sicilians felt too late the defect of their constitution, which permitted an independent people to be transferred, as the dowery of a woman, to a foreign prince, by whose ministers they might justly expect to be insulted and oppressed. Henry, whose marriage with Constance took place in 1186, and who succeeded in her right to the throne of Sicily three years afterwards, was exasperated by a courageous, but unsuccessful effort of the Norman barons to preserve the crown for an illegitimate branch of the royal family; and his reign is disgraced by a series of atrocious cruelties. The power of the house of Swabia was now at its zenith on each side of the Alps; Henry received the Imperial crown, the year after his father's death in the third crusade, and even prevailed upon the princes of Germany to elect his infant son Frederic as his successor. But his own premature decease clouded the prospects of his family: Constance survived him but a year; and a child of four years old was left with the inheritance of a kingdom, which his father's severity had rendered disaffected, and which the leaders of German mercenaries in his service desolated and disputed.

Innocent III.

During the minority of Frederic II., from 1198 to 1216, the papal chair was filled by Innocent III.; a

(1) Per servir sempre, o vincitrice o vinta. Filicaja.

name second only, and hardly second, to that of Gregory VII. Young, noble, and intrepid, he united with the accustomed spirit of ecclesiastical usurpation which no one had ever carried to so high a point, the more worldly ambition of consolidating a separate principality for the Holy See in the centre of Italy. The real or spurious donations of Constantine, Pepin, Charlemagne, and Louis, had given rise to a perpetual claim, on the part of the popes, to very extensive dominions: but little of this had been effectuated, and in Rome itself they were thwarted by the prefect, an officer who swore fidelity to the emperor, and by the insubordinate spirit of the people. In the very neighbourhood, the small cities owned no subjection to the capital, and were probably as much self-governed as those of Lombardy. One is transported back to the earliest times of the republic, in reading of the desperate wars between Rome and Tibur or Tusculum; neither of which was subjugated till the latter part of the twelfth century. At a further distance were the duchy of Spoleto, the march of Ancona, and what had been the exarchate of Ravenna, to all of which the popes had more or less grounded pretensions. Early in the last-mentioned age, the famous countess Matilda, to whose zealous protection Gregory VII. had been eminently indebted during his long dispute with the emperor, granted the reversion of all her possessions to the Holy See, first in the lifetime of Gregory, and again under the pontificate of Paschal III. These were very extensive, and held by different titles. Of her vast imperial fiefs, Mantua, Modena, and Tuscany, she certainly could not dispose. The duchy of Spoleto and march of Ancona were supposed to rest upon a different footing. I confess myself not distinctly to comprehend the nature of this part of her succession. These had been formerly among the great fiefs of the kingdom of Italy. But if I understand it rightly, they had tacitly ceased to be subject to the emperors, some years before they were seized by Godfrey of Lorraine, father-in-law and step-father of Matilda. To his son, her husband, she succeeded in the possession of those countries. They are commonly considered as her alodial or patrimonial property; yet it is not easy to see how, being herself a subject of the empire, she could transfer even her alodial estates from its sovereignty. Nor, on the other hand, can it, apparently, be maintained, that she was lawful sovereign of countries, which had not long since been imperial fiefs, and the suzerainty over which had never been renounced. The original title of the Holy See, therefore, does not seem incontestable, even as to this part of Matilda's donation. But I state with hesitation a difficulty, to which the authors I have consulted do not advert (1). It is certain, however, that the emperors

Bequest of the countess Matilda.

(1) It is almost hopeless to look for explicit information upon the rights and pretensions of the Roman see in Italian writers even of the eighteenth century. Muratori, the most learned, and upon the whole the fairest of them all, moves cautiously over this ground; except when the claims of Rome

kept possession of the whole during the twelfth century; and treated both Spoleto and Ancona as parts of the empire, notwithstanding continual remonstrances from the Roman pontiffs. Frederic Barbarossa, at the negotiations of Venice in 1177, promised to restore the patrimony of Matilda in fifteen years; but at the close of that period, Henry VI. was not disposed to execute this arrangement, and granted the county in fief to some of his German followers. Upon his death, the circumstances were favourable to Innocent III. The infant king of Sicily had been entrusted by Constance to his guardianship. A double election of Philip, brother of Henry VI., and of Otho, duke of Brunswic, engaged the princes of Germany, who had entirely overlooked the claims of young Frederic, in a doubtful civil war. Neither party was in a condition to enter Italy; and the imperial dignity was vacant for several years, till, the death of Philip removing one competitor, Otho IV., whom the pope had constantly favoured, was crowned emperor. During this interval, the Italians had no superior, and Innocent availed himself of it to maintain the pretensions of the see. These he backed by the production of rather a questionable document, the will of Henry VI., said to have been found among the baggage of Marquard, one of the German soldiers, who had been invested with fiefs by the late emperor. The cities of what we now call the ecclesiastical state had in the twelfth century their own municipal government like those of Lombardy; but they were far less able to assert a complete independence. They gladly, therefore, put themselves under the protection of the Holy See, which held out some prospect of securing them from Marquard, and other rapacious partizans, without disturbing their internal regulations. Thus the duchy of Spoleto and march of Ancona submitted to Innocent III.; but he was not strong enough to keep constant possession of such extensive territories, and some years afterwards adopted the prudent course of granting Ancona in fief to the marquis of Este. He did not, as may be supposed, neglect his authority at home; the prefect of Rome was now compelled to swear allegiance to the pope, which put an end to the regular imperial supremacy over that city; and the privileges of the citizens were abridged. This is the proper æra of that temporal sovereignty, which the bishops of Rome possess over their own city, though still prevented by various causes, for nearly three centuries, from becoming unquestioned and unlimited.

Ecclesiastical state reduced by Innocent III.

The policy of Rome was now more clearly defined than ever. In order to preserve what she had thus suddenly gained rather by opportunity than strength, it was her interest to enfeeble the im-

happen to clash with those of the house of Este. But I have not been able to satisfy myself by the perusal of some dry and tedious dissertations in St. Marc, (Abrégé Chronologique de l'Hist. de l'Italie, t. iv.) who, with learning scarcely inferior to that of Muratori, possessed more opportunity and inclination to speak out.

perial power, and consequently to maintain the freedom of the Italian republics. Tuscany had hitherto been ruled by a marquis of the emperor's appointment, though her cities were flourishing, and, within themselves, independent. In imitation of the Lombard confederacy, and impelled by Innocent III., they now (with the exception of Pisa, which was always strongly attached to the empire) formed a similar league for the preservation of their rights. In this league the influence of the pope was far more strongly manifested than in that of Lombardy. Although the latter had been in alliance with Alexander III., and was formed during the height of his dispute with Frederic, this ecclesiastical quarrel mingled so little in their struggle for liberty, that no allusion to it is found in the act of their confederacy. But the Tuscan union was expressly established "for the honour and aggrandizement of the apostolic see." The members bound themselves to defend the possessions and rights of the church; and not to acknowledge any king or emperor, without the approbation of the supreme pontiff (1). The Tuscans, accordingly, were more thoroughly attached to the church party than the Lombards, whose principle was animosity towards the house of Swabia. Hence when Innocent III. some time after supported Frederic II. against the emperor Otho IV., the Milanese and their allies were arranged on the imperial side; but the Tuscans continued to adhere to the pope.

League of Tuscany.

In the wars of Frederic Barbarossa against Milan and their allies, we have seen the cities of Lombardy divided, and a considerable number of them firmly attached to the imperial interest. It does not appear, I believe, from history, though it is by no means improbable, that the citizens were at so early a time divided among themselves, as to their line of public policy, and that the adherence of a particular city to the emperor, or to the Lombard league, was only, as proved afterwards the case, that one faction or another acquired an ascendancy in its councils. But jealousies long existing between the different classes, and only suspended by the national struggle which terminated at Constance, gave rise to new modifications of interests, and new relations towards the empire. About the year 1200, or perhaps a little later, the two leading parties which divided the cities of Lombardy, and whose mutual animosity, having no general subject of contention, required the association of a name to direct as well as invigorate its prejudices, became distinguished by the celebrated appellations of Guelfs and Ghibelins; the former adhering to the papal side, the latter to that of the emperor. These names were derived from Germany, and had been the rallying word of faction for more than half a century in that country, before they were transported to a

Factions of Guelfs and Ghibelins.

(1) Quòd possessiones et jura sacrosanctæ ecclesiæ bonâ fide defenderent; et quòd nullum in regem aut imperatorem reciperent, nisi quem Romanus pontifex approbaret. Muratori, Dissert. 48. (Latin, t. iv. p. 820.; Italian, t. iii p. 112.)

still more favourable soil. The Guelfs took their name from a very illustrious family, several of whom had successively been dukes of Bavaria in the tenth and eleventh centuries. The heiress of the last of these intermarried with a younger son of the house of Este, a noble family settled near Padua, and possessed of great estates on each bank of the lower Po. They gave birth to a second line of Guelfs, from whom the royal house of Brunswic is descended. The name of Ghibelin is derived from a village in Franconia, whence Conrad the Salic came, the progenitor, through females, of the Swabian emperors. At the election of Lothaire in 1125, the Swabian family were disappointed of what they considered almost an hereditary possession; and at this time an hostility appears to have commenced between them and the house of Guelf, who were nearly related to Lothaire. Henry the Proud and his son Henry the Lion, representatives of the latter family, were frequently persecuted by the Swabian emperors: but their fortunes belong to the history of Germany (1). Meanwhile the elder branch, though not reserved for such glorious destinies as the Guelfs, continued to flourish in Italy; the marquises of Este were by far the most powerful nobles in eastern Lombardy, and about the end of the twelfth century began to be considered as heads of the church party in their neighbourhood. They were frequently chosen to the office of podestà, or chief magistrate, by the cities of Romagna; and, in 1208, the people of Ferrara set the fatal example of sacrificing their freedom for tranquillity, by electing Azzo VII., marquis of Este, as their lord or sovereign (2).

Otho IV.

Otho IV. was son of Henry the Lion, and consequently head of the Guelfs. On his obtaining the imperial crown, the prejudices of Italian factions were diverted out of their usual channel. He was soon engaged in a quarrel with the pope, whose hostility to the empire was certain, into whatever hands it might fall. In Milan, however, and generally in the cities which had belonged to the Lombard league against Frederic I., hatred of the house of Swabia prevailed more than jealousy of the imperial prerogatives; they adhered to names rather than to principles, and supported a Guelf emperor even against the pope. Terms of this description, having no definite relation to principles which it might be troublesome to learn and defend, are always acceptable to mankind, and have the peculiar advantage of precluding altogether that spirit of compromise and accommodation, by which it is sometimes endeavoured to obstruct their tendency to hate and injure each other. From this time, every city, and almost every citizen, gloried in one of these barbarous denominations. In several cities the imperial party predominated through hatred of their neighbours,

(1) The German origin of these celebrated factions is clearly proved by a passage in Otho of Frisingen, who lived half a century before we find the denominations transferred to Italy. Struvius, Corpus Hist. German. p. 378., and Muratori, A. D. 1152.

(2) Sismondi, t. ii. p. 329.

who espoused that of the church. Thus the inveterate feuds between Pisa and Florence, Modena and Bologna, Cremona and Milan, threw them into opposite factions. But there was in every one of these a strong party against that which prevailed, and consequently a Guelf city frequently became Ghibelin, or conversely, according to the fluctuations of the time (1).

Frederic II.

The change to which we have adverted in the politics of the Guelf party lasted only during the reign of Otho IV. When the heir of the house of Swabia grew up to manhood, Innocent, who, though his guardian, had taken little care of his interests, as long as he flattered himself with the hope of finding a Guelf emperor obedient, placed the young Frederic at the head of an opposition composed of cities always attached to his family, and of such as implicitly followed the see of Rome. He met with considerable success both in Italy and Germany, and, after the death of Otho, received the imperial crown. But he had no longer to expect any assistance from the pope who conferred it. Innocent was dead, and Honorius III., his successor, could not behold without apprehension the vast power of Frederic, supported in Lombardy by a faction which balanced that of the church, and menacing the ecclesiastical territories on the other side, by the possession of Naples and Sicily. This kingdom, feudatory to Rome, and long her firmest ally, was now, by a fatal connexion which she had not been able to prevent, thrown into the scale of her most dangerous enemy. Hence the temporal dominion which Innocent III. had taken so much pains to establish, became a very precarious possession, exposed on each side to the attacks of a power that had legitimate pretensions to almost every province composing it. The life of Frederic II. was wasted in an unceasing contention with the church, and with his Italian subjects, whom she excited to rebellions against him. Without inveighing, like the popish writers, against this prince, certainly an encourager of letters, and endowed with many eminent qualities, we may lay to his charge a good deal of dissimulation; I will not add ambition, because I am not aware of any period in the reign of Frederic, when he was not obliged to act on his defence against the aggression of others. But if he had been a model of virtues, such men as Honorius III., Gre-

(1) For the Guelf and Ghibelin factions, besides the historians, the 51st dissertation of Muratori should be read. There is some degree of inaccuracy in his language, where he speaks of these distractions expiring at the beginning of the fifteenth century. Quel secolo, è vero, abbondò anch' esso di molte guerre, ma nulla si operò sotto nome o pretesto delle fazioni suddette; solamente ritennero esse piede in alcune private famiglie. Antichità italiane, t. iii. p. 148. But certainly the names of Guelf and Ghibelin, as party distinctions, may be traced all through the fifteenth century. The former faction shewed itself distinctly in the insurrection of the cities subject to Milan, upon the death of Gian Galeazzo Visconti in 1404. It appeared again in the attempt of the Milanese to re-establish their republic in 1447. Sismondi, t. ix. p. 334. So in 1477, Ludovico Sforza made use of Ghibelin prejudices to exclude the regent Bonne of Savoy as a Guelf. Sismondi, t. xi. p. 79. In the ecclesiastical state, the same distinctions appear to have been preserved still later. Stefano Infessura, in 1487, speaks familiarly of them. Script. Rer. Ital. t. iii. p. 1221. And even in the conquest of Milan by Louis XII., in 1500, the Guelfs of that city are represented as attached to the French party, while the Ghibelins abetted Ludovico Sforza and Maximilian. Guicciardini, p. 399. Other passages in the same historian shew these factions to have been alive in various parts of Italy.

gory IX. and Innocent IV., the popes with whom he had successively to contend, would not have given him respite, while he remained master of Naples, as well as the empire (1).

It was the custom of every pope to urge princes into a crusade, which the condition of Palestine rendered indispensable, or, more properly, desperate. But this great piece of supererogatory devotion had never yet been raised into an absolute duty of their station, nor had even private persons been ever required to take up the cross by compulsion. Honorius III., however, exacted a vow from Frederic, before he conferred upon him the imperial crown, that he would undertake a crusade for the deliverance of Jerusalem. Frederic submitted to this engagement, which perhaps he never designed to keep, and certainly endeavoured afterwards to evade. Though he became by marriage nominal king of Jerusalem (2), his excellent understanding was not captivated with so barren a prospect, and at length his delays in the performance of his vow provoked Gregory IX. to issue against him a sentence of excommunication. Such a thunderbolt was not to be lightly regarded; and Frederic sailed, the next year, for Palestine. But having disdained to solicit absolution for what he considered as no crime, the court of Rome was excited to still fiercer indignation against this profanation of a crusade by an excommunicated sovereign. Upon his arrival in Palestine, he received intelligence that the papal troops had broken into the kingdom of Naples. No one could rationally have blamed Frederic, if he had quitted the Holy Land as he found it; but he made a treaty with the Saracens, which, though by no means so disadvantageous as under all the circumstances might have been expected, served as a pretext for new calumnies against him in Europe. The charge of irreligion, eagerly and successfully propagated, he repelled by persecuting edicts against heresy, that do no great honour to his memory, and availed him little at the time. Over his Neapolitan dominions he exercised a rigorous government, rendered perhaps necessary by the levity and insubordination characteristic of the inhabitants, but which tended, through the artful

(1) The rancour of bigoted Catholics against Frederic has hardly subsided at the present day. A very moderate commendation of him in Tiraboschi, vol. iv. l. 7., was not suffered to pass uncontradicted by the Roman editor. And though Muratori shews quite enough prejudice against that emperor's character, a fierce Roman bigot, whose animadversions are printed in the 17th volume of his annals, (8vo edition) flies into paroxysms of fury at every syllable that looks like moderation. It is well known, that, although the public policy of Rome has long displayed the pacific temper of weakness, the thermometer of ecclesiastical sentiment in that city stands very nearly as high, as in the thirteenth century. Giannone, who suffered for his boldness, has drawn Frederic II. very favourably, perhaps too favourably, in the 16th and 17th books of the Istoria Civile di Napoli.

(2) The second wife of Frederic was Iolante, or Violante, daughter of John, count of Brienne, by Maria, eldest daughter and heiress of Isabella, wife of Conrad, marquis of Montferrat. This Isabella was the youngest daughter of Almaric or Amaury, king of Jerusalem, and by the deaths of her brother Baldwin IV., of her eldest sister Sibilla, wife of Guy de Lusignan, and that sister's child Baldwin V., succeeded to a claim upon Jerusalem, which, since the victories of Saladin, was not very profitable. It is said that the kings of Naples deduce their title to that sounding inheritance from this marriage of Frederic, (Giannone, l. xvi. c. 2.) but the extinction of Frederic's posterity must have, strictly speaking, put an end to any right derived from him; and Giannone himself indicates a better title by the cession of Maria, a princess of Antioch, and legitimate heiress of Jerusalem, to Charles of Anjou in 1272. How far, indeed, this may have been regularly transmitted to the present king of Naples, I do not know, and am sure that it is not worth while to inquire.

representations of Honorius and Gregory, to alarm and alienate the Italian republics.

His wars with the Lombards.

A new generation had risen up in Lombardy since the peace of Constance, and the prerogatives reserved by that treaty to the empire were so seldom called into action, that few cities were disposed to recollect their existence. They denominated themselves Guelfs or Ghibelins, according to habit, and out of their mutual opposition, but without much reference to the empire. Those however of the former party, and especially Milan, retained their antipathy to the house of Swabia. Though Frederic II. was entitled, as far as established usage can create a right, to the sovereignty of Italy, the Milanese would never acknowledge him, nor permit his coronation at Monza, according to ancient ceremony, with the iron crown of the Lombard kings. The pope fomented, to the utmost of his power, this disaffected spirit, and encouraged the Lombard cities to renew their former league. This, although conformable to a provision in the treaty of Constance, was manifestly hostile to Frederic, and may be considered as the commencement of a second contest between the republican cities of Lombardy and the empire. But there was a striking difference between this and the former confederacy against Frederic Barbarossa. In the league of 1167, almost every city, forgetting all smaller animosities in the great cause of defending the national privileges, contributed its share of exertion to sustain that perilous conflict; and this transient unanimity in the people so distracted by internal faction as the Lombards is the surest witness to the justice of their undertaking. Sixty years afterwards, their war against the second Frederic had less of provocation and less of public spirit. It was in fact a party struggle of Guelf and Ghibelin cities, to which the names of the church and the empire gave more of dignity and consistence.

Arrangement of Lombard cities.

The republics of Italy in the thirteenth century were so numerous and independent, and their revolutions so frequent, that it is a difficult matter to avoid confusion in following their history. It will give more arrangement to our ideas, and at the same time illustrate the changes that took place in these little states, if we consider them as divided into four clusters or constellations, not indeed unconnected one with another, yet each having its own centre of motion, and its own boundaries. The first of these we may suppose formed of the cities in central Lombardy, between the Sessia and the Adige, the Alps and the Ligurian mountains; it comprehends Milan, Cremona, Pavia, Brescia, Bergamo, Parma, Piacenza, Mantua, Lodi, Alessandria, and several others less distinguished. These were the original seats of Italian liberty, the great movers in the wars of the elder Frederic. Milan was at the head of this cluster of cities, and her influence gave an ascendency to the Guelf party; she had, since the treaty of Constance, rendered Lodi and Pavia almost her subjects, and was in strict union with Brescia

and Piacenza. Parma, however, and Cremona, were unshaken defenders of the empire. In the second class we may place the cities of the march of Verona, between the Adige and the frontiers of Germany. Of these there were but four worth mentioning: Verona, Vicenza, Padua, and Treviso. The citizens of all the four were inclined to the Guelf interests; but a powerful body of rural nobility, who had never been compelled, like those upon the upper Po, to quit their fortresses in the hilly country, or reside within the walls, attached themselves to the opposite denomination (1). Some of them obtained very great authority in the civil feuds of these four republics; and especially two brothers, Eccelin and Alberic da Romano, of a rich and distinguished family, known for its devotion to the empire. By extraordinary vigour and decision of character, by dissimulation and breach of oaths, by the intimidating effects of almost unparalleled cruelty, Eccelin da Romano became after some years the absolute master of three cities, Padua, Verona, and Vicenza; and the Guelf party, in consequence, was entirely subverted beyond the Adige, during the continuance of his tyranny (2). Another cluster was composed of the cities in Romagna; Bologna, Imola, Faenza, Ferrara, and several others. Of these Bologna was far the most powerful, and, as no city was more steadily for the interests of the church, the Guelfs usually predominated in this class; to which also the influence of the house of Este not a little contributed. Modena, though not geographically within the limits of this division, may be classed along with it, from her constant wars with Bologna. A fourth class will comprehend the whole of Tuscany, separated almost entirely from the politics of Lombardy and Romagna. Florence headed the Guelf cities in this province, Pisa the Ghibelin. The Tuscan union was formed, as has been said above, by Innocent III., and was strongly inclined to the popes; but gradually the Ghibelin party acquired its share of influence; and the cities of Siena, Arezzo, and Lucca shifted their policy, according to external circumstances, or the fluctuations of their internal factions. The petty cities in the region of Spoleto and Ancona hardly perhaps deserve the name of republics; and Genoa does not readily fall into any of our four classes, unless her wars with Pisa may be thought to connect her with Tuscany (3).

(1) Sismondi, t. ii. p. 222.

(2) The cruelties of Eccelin excited universal horror in an age, when inhumanity towards enemies was as common as fear and revenge could make it. It was an usual trick of beggars, all over Italy, to pretend that they had been deprived of their eyes or limbs by the Veronese tyrant. There is hardly an instance in European history of so sanguinary a government subsisting for more than twenty years. The crimes of Eccelin are remarkably well authenticated by the testimony of several contemporary writers, who enter into great details. Most of these are found in the seventh volume of Scriptores Rerum Italicarum. Sismondi, t. iii. p. 83. 111. 203., is more full than any of the moderns.

(3) I have taken no notice of Piedmont in this division. The history of that country is far less elucidated by ancient or modern writers than that of other parts of Italy. It was at this time divided between the counts of Savoy and marquises of Montferrat. But Asti, Chieri, and Turin, especially the two former, appear to have had a republican form of government. They were however not absolutely independent. The only Piedmontese city that can properly be considered as a separate state, in the thirteenth century, was Vercelli; and even there the bishop seems to have possessed a

After several years of transient hostility and precarious truce, the Guelf cities of Lombardy engaged in a regular and protracted war with Frederic II., or more properly, with their Ghibelin adversaries. Few events of this contest deserve particular notice. Neither party ever obtained such decisive advantages as had alternately belonged to Frederic Barbarossa and the Lombard confederacy, during the war of the preceding century. A defeat of the Milanese by the emperor, at Corte Nuova, in 1237, was balanced by his unsuccessful siege of Brescia the next year. The Pisans assisted Frederic to gain a great naval victory over the Genoese fleet, in 1241; but he was obliged to rise from the blockade of Parma, which had left the standard of Ghibelinism in 1248. Ultimately, however, the strength of the house of Swabia was exhausted by so tedious a struggle; the Ghibelins of Italy had their vicissitudes of success; but their country, and even themselves, lost more and more of the ancient connexion with Germany.

In this resistance to Frederic II., the Lombards were much indebted to the constant support of Gregory IX. and his successor Innocent IV.; and the Guelf, or the church party, were used as synonymous terms. These pontiffs bore an unquenchable hatred to the house of Swabia. No concessions mitigated their animosity; no reconciliation was sincere. Whatever faults may be imputed to Frederic, it is impossible for any one, not blindly devoted to the court of Rome, to deny that he was iniquitously proscribed by her unprincipled ambition. His real crime was the inheritance of his ancestors, and the name of the house of Swabia. In 1239, he was excommunicated by Gregory IX. To this he was tolerably accustomed by former experience: but the sentence was attended by an absolution of his subjects from their allegiance, and a formal deposition. These sentences were not very effective upon men of vigorous minds, or upon those whose passions were engaged in their cause; but they influenced both those who feared the threatenings of the clergy and those who wavered already as to their line of political conduct. In the fluctuating state of Lombardy, the excommunication of Frederic undermined his interests even in cities, like Parma, that had been friendly, and seemed to identify the cause of his enemies with that of religion; a prejudice artfully fomented by means of calumnies propagated against himself, and which the conduct of such leading Ghibelins as Eccelin, who lived in an open defiance of God and man, did not contribute to lessen. In 1240, Gregory proceeded to publish a crusade against Frederic, as if he had been an open enemy to religion; which he revenged by putting to death all the prisoners he made who wore the cross. There was one thing wanting to make the expulsion of the emperor from the Christian commonwealth more

sort of temporal sovereignty. Denina, author of the Rivoluzioni d' Italia, first printed in 1769, lived to publish in his old age a history of western Italy, or Piedmont, from which I have gleaned a few facts. Istoria dell' Italia Occidentale; Torino, 1809. 6 vols. 8vo.

complete. Gregory IX. accordingly projected, and Innocent IV. carried into effect, the convocation of a general council. This was held at Lyons, an imperial city, but over which Frederic could no longer retain his supremacy. In this assembly, where one hundred and forty prelates appeared, the question whether Frederic ought to be deposed was solemnly discussed; he submitted to defend himself by his advocates; and the pope in the presence, though without formally collecting the suffrages of the council, pronounced a sentence, by which Frederic's excommunication was renewed, the empire and all his kingdoms taken away, and his subjects absolved from their fidelity. This is the most pompous act of usurpation in all the records of the church of Rome; and the tacit approbation of a general council seemed to incorporate the pretended right of deposing kings, which might have passed as a mad vaunt of Gregory VII. and his successors, with the established faith of Christendom.

Council of Lyons. 1245

Conrad IV.

Upon the death of Frederic II. in 1250, he left to his son Conrad a contest to maintain for every part of his inheritance, as well as for the imperial crown. But the vigour of the house of Swabia was gone; Conrad was reduced to fight for the kingdom of Naples, the only succession which he could hope to secure against the troops of Innocent IV., who still pursued his family with implacable hatred, and claimed that kingdom as forfeited to its feudal superior, the Holy See. After Conrad's premature death, which happened in 1254, the throne was filled by his legitimate brother Manfred, who retained it by his bravery and address, in despite of the popes, till they were compelled to call in the assistance of a more powerful arm.

The death of Conrad brings to a termination that period in Italian history, which we have described as nearly co-extensive with the greatness of the house of Swabia. It is perhaps upon the whole the most honourable to Italy, that in which she displayed the most of national energy and patriotism. A Florentine or Venetian may dwell with pleasure upon later times; but a Lombard will cast back his eye across the desert of centuries, till it reposes on the field of Legnano. Great changes followed in the foreign and internal policy, in the moral and military character of Italy. But before we descend to the next period, it will be necessary to remark some material circumstances in that which has just passed under our review.

Causes of the success of Lombardy.

The successful resistance of the Lombard cities to such princes as both the Frederics must astonish a reader, who brings to the story of these middle ages notions derived from modern times. But when we consider not only the ineffectual controul which could be exerted over a feudal army, bound only to a short term of service, and reluctantly kept in the field at its own cost, but the peculiar distrust and disaffection with which

many German princes regarded the house of Swabia, less reason will appear for surprise. Nor did the kingdom of Naples, almost always in agitation, yield any material aid to the second Frederic. The main cause, however, of that triumph which attended Lombardy was the intrinsic energy of a free government. From the eleventh century, when the cities became virtually republican, they put out those vigorous shoots which are the growth of freedom alone. Their domestic feuds, their mutual wars, the fierce assaults of their national enemies, checked not their strength, their wealth, or their population; but rather as the limbs are nerved by labour and hardship, the republics of Italy grew in vigour and courage, through the conflicts they sustained. If we but remember what savage licence prevailed during the ages that preceded their rise, the rapine of public robbers, or of feudal nobles little differing from robbers, the contempt of industrious arts, the inadequacy of penal laws and the impossibility of carrying them into effect, we shall form some notion of the change which was wrought in the condition of Italy by the growth of its cities. In comparison with the blessings of industry protected, injustice controuled, emulation awakened, the disorders which ruffled their surface appear slight and momentary. I speak only of this first stage of their independence, and chiefly of the twelfth century, before those civil dissensions had reached their height, by which the glory and prosperity of Lombardy were soon to be subverted.

We have few authentic testimonies as to the domestic improvement of the free Italian cities, while they still deserve the name. But we may perceive by history, that their power and population, according to their extent of territory, were almost incredible. In Galvaneus Flamma, a Milanese writer, we find a curious statistical account of that city in 1288, which, though of a date about thirty years after its liberties had been overthrown by usurpation, must be considered as implying a high degree of previous advancement, even if we make allowance, as probably we should, for some exaggeration. The inhabitants are reckoned at 200,000; the private houses 13,000; the nobility alone dwelt in sixty streets; 8,000 gentlemen, or heavy cavalry (milites) might be mustered from the city and its district, and 240,000 men capable of arms; a force sufficient, the writer observes, to crush all the Saracens. There were in Milan six hundred notaries, two hundred physicians, eighty schoolmasters, and fifty transcribers of manuscripts. In the district were one hundred and fifty castles with adjoining villages. Such was the state of Milan, Flamma concludes, in 1288; it is not for me to say, whether it has gained or lost ground since that time (1). At this period, the territory of Mi-

(1) Muratori, Script. Rerum Italic. t. xi. This expression of Flamma may seem to intimate, that Milan had declined in his time, which was about 1340. Yet as she had been continually advancing in power, and had not yet experienced any tyrannical government, I cannot imagine this to have been the case; and the same Flamma, who is a great flatterer of the Visconti, and has dedicated a

lan was not perhaps more extensive than the county of Surrey; it was bounded, at a little distance, on almost every side, by Lodi, or Pavia, or Bergamo, or Como. It is possible, however, that Flamma may have meant to include some of these as dependencies of Milan, though not strictly united with it. How flourishing must the state of cultivation have been in such a country, which not only drew no supplies from any foreign land, but exported part of her own produce! It was in the best age of their liberties, immediately after the battle of Legnano, that the Milanese commenced the great canal which conducts the waters of the Tesino to their capital, a work very extraordinary for that time. During the same period the cities gave proofs of internal prosperity that in many instances have descended to our own observation, in the solidity and magnificence of their architecture. Ecclesiastical structures were perhaps more splendid in France and England; but neither country could pretend to match the palaces and public buildings, the streets flagged with stone, the bridges of the same material, or the commodious private houses of Italy (1).

The courage of these cities was wrought sometimes to a tone of insolent defiance, through the security inspired by their means of defence. From the time of the Romans, to that when the use of gunpowder came to prevail, little change was made, or perhaps could be made, in that part of military science which relates to the attack and defence of fortified places. We find precisely the same engines of offence; the cumbrous towers, from which arrows were shot at the besieged, the machines from which stones were discharged, the battering-rams which assailed the walls, and the basket-work covering (the vinea or testudo of the ancients, and the gattus or chatchateil of the middle ages) under which those who pushed the battering engines were protected from the enemy. On the other hand, a city was fortified with a strong wall of brick or marble, with towers raised upon it at intervals, and a deep moat in front. Sometimes the antemural or barbacan was added; a rampart of less height, which impeded the approach of the hostile engines. The gates were guarded with a portcullis; an invention which, as well as the barbacan, was borrowed from the Saracens (2). With such advantages for defence, a numerous and intrepid body of burghers might not unreasonably stand at bay against a powerful army; and as the consequences of capture were most terrible, while resistance was seldom hopeless, we cannot wonder at the desperate bravery

particular work to the praises of Azzo, asserts therein, that he had greatly improved the beauty and convenience of the city; though Brescia, Cremona, and other places had declined. Azarius too, a writer of the same age, makes a similar representation. Script. Rer. Ital. t. xvi. p. 314. and 317. Of Luchino Visconti he says: Statum Mediolani reintegravit in tantum, quod non civitas, sed provincia videbatur.

(1) Sismondi, t. iv. p. 176. Tiraboschi, t. iv. p. 426. See also the observations of Denina on the population and agriculture of Italy, l. xiv. c. 9. 10., chiefly indeed applicable to a period rather later than that of her free republics.

(2) Muratori, Antiquit. Ital. Dissert. 26.

of so many besieged towns. Indeed it seldom happened that one of considerable size was taken, except by famine or treachery. Tortona did not submit to Frederic Barbarossa, till the besiegers had corrupted with sulphur the only fountain that supplied the citizens; nor Crema, till her walls were overtopped by the battering engines. Ancona held out a noble example of sustaining the pressure of extreme famine. Brescia tried all the resources of a skilful engineer against the second Frederic; and swerved not from her steadiness, when that prince, imitating an atrocious precedent of his grandfather at the siege of Crema, exposed his prisoners upon his battering engines to the stones that were hurled by their fellow-citizens upon the walls (1).

Their internal government.

Of the government which existed in the republics of Italy during the twelfth and thirteenth centuries, no definite sketch can be traced. The chroniclers of those times are few and jejune; and, as is usual with contemporaries, rather intimate than describe the civil polity of their respective countries. It would indeed be a weary task, if it were even possible, to delineate the constitutions of thirty or forty little states which were in perpetual fluctuation. The magistrates elected in almost all of them, when they first began to shake off the jurisdiction of their count or bishop, were styled consuls; a word very expressive to an Italian ear, since, in the darkest ages, tradition must have preserved some acquaintance with the republican government of Rome (2). The consuls were always annual; and their office comprehended the command of the national militia in war, as well as the administration of justice, and preservation of public order; but their number was various; two, four, six, or even twelve. In their legislative and deliberative councils, the Lombards still copied the Roman constitution, or perhaps fell naturally into the form most calculated to unite sound discretion with the exercise of popular sovereignty. A council of trust and secresy (della credenza) was composed of a small number of persons, who took the management of public affairs, and may be called the ministers of the state. But the decision upon matters of general importance, treaties of alliance or declarations of war, the choice of consuls or ambassadors, belonged to the general council. This appears not to have been uniformly constituted in every city; and according to its composition, the government was more or less democratical. An ultimate sovereignty, however, was reserved to the mass of the people; and a parliament or general assembly was held to deliberate on any change in the form of constitution (3).

(1) See these sieges in the second and third volumes of Sismondi. That of Ancona, t. ii. p. 143—206., is told with remarkable elegance, and several interesting circumstances.

(2) Landulf the younger, whose history of Milan extends from 1094 to 1133, calls himself publicorum officiorum particeps et *consulum* epistolarum dictator. Script. Rer. Ital. t. v. p. 486. This is, I believe, the earliest mention of those magistrates. Muratori, Annali d'Italia, A. D. 1107.

(3) Muratori, Dissert. 46. and 52. Sismondi, t. i. p. 385.

About the end of the twelfth century, a new and singular species of magistracy was introduced into the Lombard cities. During the tyranny of Frederic I., he had appointed officers of his own, called podestàs, instead of the elective consuls. It is remarkable that this memorial of despotic power should not have excited insuperable alarm and disgust in the free republics. But, on the contrary, they almost universally, after the peace of Constance, revived an office, which had been abrogated when they first rose in rebellion against Frederic. From experience, as we must presume, of the partiality which their domestic factions carried into the administration of justice, it became a general practice to elect, by the name of podestà, a citizen of some neighbouring state, as their general, their criminal judge, and preserver of the peace. The last duty was frequently arduous, and required a vigorous as well as an upright magistrate. Offences against the laws and security of the commonwealth were during the middle ages as often, perhaps more often, committed by the rich and powerful, than by the inferior class of society. Rude and licentious manners, family feuds and private revenge, or the mere insolence of strength, rendered the execution of criminal justice, practically and in every day's experience, what it is now in theory, a necessary protection to the poor against oppression. The sentence of a magistrate against a powerful offender was not pronounced without danger of tumult; it was seldom executed without force. A convicted criminal was not, as at present, the stricken deer of society, whose disgrace his kindred shrink from participating, and whose memory they strive to forget. Imputing his sentence to iniquity, or glorying in an act, which the laws of his fellow citizens, but not their sentiments, condemned, he stood upon his defence amidst a circle of friends. The law was to be enforced not against an individual, but a family; not against a family, but a faction; not perhaps against a local faction, but the whole Guelf or Ghibelin name, which might become interested in the quarrel. The podestà was to arm the republic against her refractory citizen; his house was to be besieged and razed to the ground, his defenders to be quelled by violence: and thus the people become familiar with outrage and homicide under the command of their magistrates, were more disposed to repeat such scenes at the instigation of their passions (1).

The podestà was sometimes chosen in a general assembly, sometimes by a select number of citizens. His office was annual, though prolonged in peculiar emergencies. He was invariably a man of noble family, even in those cities which excluded their own nobility from any share in the government. He received a fixed salary, and was compelled to remain in the city, after the expiration of his office, for the purpose of answering such charges, as might be ad-

(1) Sismondi, t. iii. p. 238., from whom the substance of these observations is borrowed. They may be copiously illustrated by Villani's History of Florence, and Stella's Annals of Genoa.

duced against his conduct. He could neither marry a native of the city, nor have any relation resident within the district, nor even, so great was their jealousy, eat or drink in the house of any citizen. The authority of these foreign magistrates was not by any means alike in all cities. In some he seems to have superseded the consuls, and commanded the armies in war. In others, as Milan and Florence, his authority was merely judicial. We find in some of the old annals, the years headed by the names of the podestàs, as by those of the consuls in the history of Rome (1).

and dissensions.

The effects of the evil spirit of discord, that had so fatally breathed upon the republics of Lombardy, were by no means confined to national interests, or to the grand distinction of Guelf and Ghibelin. Dissensions glowed in the heart of every city, and as the danger of foreign war became distant, these grew more fierce and unappeasable. The feudal system had been established upon the principle of territorial aristocracy; it maintained the authority, it encouraged the pride of rank. Hence, when the rural nobility were compelled to take up their residence in cities, they preserved the ascendency of birth and riches. From the natural respect which is shewn to these advantages, all offices of trust and command were shared amongst them; it is not material whether this were by positive right, or continual usage. A limited aristocracy of this description, where the inferior citizens possess the right of selecting their magistrates by free suffrage from a numerous body of nobles, is not among the worst forms of government, and affords no contemptible security against oppression and anarchy. This regimen appears to have prevailed in most of the Lombard cities during the eleventh and twelfth centuries; though, in so great a deficiency of authentic materials, it would be too peremptory to assert this as an unequivocal truth. There is one very early instance, in the year 1041, of a civil war at Milan between the capitanei, or vassals of the empire, and the plebeian burgesses, which was appeased by the mediation of Henry III. This is ascribed to the ill treatment which the latter experienced; as was usual indeed in all parts of Europe, but which was endured with inevitable submission every where else. In this civil war, which lasted three years, the nobility were obliged to leave Milan, and carry on the contest in the adjacent plains; and one of their class, by name Lanzon, whether moved by ambition, or by virtuous indignation against tyranny, put himself at the head of the people (2).

From this time we scarcely find any mention of dissensions among the two orders, till after the peace of Constance; a proof, however defective the contemporary annals may be, that such disturbances had neither been frequent nor serious. A schism between the nobles and people is noticed to have occurred at

(1) Muratori, Dissert. 46.
(2) Landulfus, Hist. Mediolan. in Script. Rerum Ital. t. iv. p. 86. Muratori, Dissert. 52. Annali d' Italia, A. D. 1041. St. Marc. t. iii. p. 94.

Faenza in 1185. A serious civil war of some duration broke out between them at Brescia in 1200. From this time mutual jealousies interrupted the domestic tranquillity of other cities, but it is about 1220 that they appear to have taken a decided aspect of civil war; within a few years of that epoch, the question of aristocratical or popular command was tried by arms in Milan, Piacenza, Modena, Cremona, and Bologna (1).

It would be vain to enter upon the merits of these feuds, which the meagre historians of the time are seldom much disposed to elucidate, and which they saw with their own prejudices. A writer of the present age would shew little philosophy, if he were to heat his passions by the reflection, as it were, of those forgotten animosities, and aggravate, like a partial contemporary, the failings of one or another faction. We have no need of positive testimony to acquaint us with the general tenor of their history. We know that a nobility is always insolent, that a populace is always intemperate; and may safely presume, that the former began as the latter ended, by injustice and abuse of power. At one time the aristocracy, not content with seeing the annual magistrates selected from their body, would endeavour by usurpation to exclude the bulk of the citizens from suffrage. At another, the merchants, grown proud by riches and confident of their strength, would aim at obtaining the honours of the state, which had been reserved to the nobility. This is the inevitable consequence of commercial wealth, and indeed of freedom and social order, which are the parents of wealth. There is in the progress of civilization a term at which exclusive privileges must be relaxed, or the possessors must perish along with them. In one or two cities a temporary compromise was made through the intervention of the pope, whereby offices of public trust, from the highest to the lowest, were divided, in equal proportions or otherwise, between the nobles and the people. This also is no bad expedient, and proved singularly efficacious in appeasing the dissensions of Rome.

There is, however, a natural preponderance in the popular scale, which, in a fair trial, invariably gains on that of the less numerous class. The artizans, who composed the bulk of the population, were arranged in companies according to their occupations. Sometimes, as at Milan, they formed separate associations, with rules for their internal government (2). The clubs, called at Milan la Motta and la Credenza, obtained a degree of weight not at all surprising to those who consider the spirit of mutual attachment which belongs to such fraternities; and we shall see a more striking instance of this hereafter in the republic of Florence. To so formidable and organized a democracy, the nobles opposed their numerous families, the generous spirit that belongs to high birth, the

(1) Sismondi, t. ii. p. 444. Muratori, Annali d'Italia, A. D. 1185, etc.

(2) Muratori, Dissert. 52. Sismondi, t. iii. p. 262.

influence of wealth and established name. The members of each distinguished family appear to have lived in the same street; their houses were fortified with square massive towers of commanding height, and wore the semblance of castles within the walls of a city. Brancaleon, the famous senator of Rome, destroyed one hundred and forty of these domestic entrenchments, which were constantly serving the purpose of civil broils and outrage. Expelled, as frequently happened, from the city, it was in the power of the nobles to avail themselves of their superiority in the use of cavalry, and to lay waste the district, till weariness of an unprofitable contention reduced the citizens to terms of compromise. But, when all these resources were ineffectual, they were tempted or forced to sacrifice the public liberty to their own welfare, and lent their aid to a foreign master or a domestic usurper.

In all these scenes of turbulence, whether the contest was between the nobles and people, or the Guelf and Ghibelin factions, no mercy was shewn by the conquerors. The vanquished lost their homes and fortunes, and retiring to other cities of their own party, waited for the opportunity of revenge. In a popular tumult, the houses of the beaten side were frequently levelled to the ground; not perhaps from a sort of senseless fury which Muratori inveighs against, but on account of the injury which these fortified houses inflicted upon the lower citizens. The most deadly hatred is that which men exasperated by proscription and forfeiture bear to their country; nor have we need to ask any other cause for the calamities of Italy, than the bitterness with which an unsuccessful faction was thus pursued into banishment. When the Ghibelins were returning to Florence, after a defeat given to the prevailing party in 1260, it was proposed among them to demolish the city itself which had cast them out; and but for the persuasion of one man, Farinata degl' Uberti, their revenge would have thus extinguished all patriotism (1). It is to this that we must ascribe their proneness to call in assistance from every side, and to invite any servitude for the sake of retaliating upon their adversaries. The simple love of public liberty is in general, I fear, too abstract a passion to glow warmly in the human breast; and though often invigorated as well as determined by personal animosities and predilections, is as frequently extinguished by the same cause.

Independently of the two leading differences which embattled the citizens of an Italian state, their form of government and their relation to the empire, there were others more contemptible, though not less mischievous. In every city the quarrels of private families became the foundation of general schism, sedition, and proscription. Sometimes these blended themselves with the grand distinctions of

(1) G. Villani, l. vi. c. 82. Sismondi. I cannot forgive Dante for placing this patriot tra l' anime più nere, in one of the worst regions of his Inferno. The conversation of the poet with Farinata, cant. 10., is very fine, and illustrative of Florentine history.

Guelf and Ghibelin; sometimes they were more nakedly conspicuous. This may be illustrated by one or two prominent examples. Imilda de' Lambertazzi, a noble young lady at Bologna, was surprised by her brothers in a secret interview with Boniface Gieremei, whose family had long been separated by the most inveterate enmity from her own. She had just time to escape, while the Lambertazzi dispatched her lover with their poisoned daggers. On her return, she found his body still warm, and a faint hope suggested the remedy of sucking the venom from his wounds. But it only communicated itself to her own veins; and they were found by her attendants, stretched lifeless by each other's side. So cruel an outrage wrought the Gieremei to madness; they formed alliances with some neighbouring republics; the Lambertazzi took the same measures; and after a fight in the streets of Bologna, of forty days' duration, the latter were driven out of the city, with all the Ghibelins, their political associates. Twelve thousand citizens were condemned to banishment; their houses razed, and their estates confiscated (1). Florence was at rest, till, in 1215, the assassination of an individual produced a mortal feud between the families Buondelmonti and Uberti, in which all the city took a part. An outrage committed at Pistoja, in 1300, split the inhabitants into the parties of Bianchi and Neri; and these spreading to Florence, created one of the most virulent divisions which annoyed that republic. In one of the changes which attended this little ramification of faction, Florence expelled a young citizen who had borne offices of magistracy, and espoused the cause of the Bianchi. Dante Alighieri retired to the courts of some Ghibelin princes, where his sublime and inventive mind, in the gloom of exile, completed that original combination of vast and extravagant conceptions with keen political satire, which has given immortality to his name, and even lustre to the petty contests of his time (2).

In the earlier stages of the Lombard republics, their differences, as well mutual as domestic, had been frequently appeased by the mediation of the emperors: and the loss of this salutary influence may be considered as no slight evil attached to that absolute emancipation which Italy attained in the thirteenth century. The popes sometimes endeavoured to interpose an authority, which, though not quite so direct, was held in greater veneration; and, if their own tempers had been always pure from the selfish and vindictive passions of those whom they influenced, might have produced more general and permanent good. But they considered the Ghibelins as their own peculiar enemies, and the triumph of the opposite faction as the church's best security. Gregory X. and Nicholas III.,

(1) Sismondi, t. iii. p. 442. This story may suggest that of Romeo and Juliet, itself founded upon an Italian novel, and not an unnatural picture of manners.

(2) Dino Compagni, in Scr. Rer. Ital. t. ix. Villani. Ist. Fiorent. l. viii. Dante, passim.

whether from benevolent motives, or because their jealousy of Charles of Anjou, while at the head of the Guelfs, suggested the revival of a Ghibelin party as a counterpoise to his power, distinguished their pontificate by enforcing measures of reconciliation in all Italian cities; but their successors returned to the ancient policy and prejudices of Rome.

Giovanni di Vicenza.

The singular history of an individual far less elevated in station than popes or emperors, Fra Giovanni di Vicenza, belongs to these times, and to this subject. This Dominican friar began his career at Bologna in 1233, preaching the cessation of war, and forgiveness of injuries. He repaired from thence to Padua, to Verona, and the neighbouring cities. At his command men laid down their instruments of war, and embraced their enemies. With that susceptibility of transient impulse natural to popular governments, several republics implored him to reform their laws and to settle their differences. A general meeting was summoned in the plain of Paquara, upon the banks of the Adige. The Lombards poured themselves forth from Romagna and the cities of the March; Guelfs and Ghibelins, nobles and burghers, free citizens and tenantry of feudal lords, marshalled around their carroccios, caught from the lips of the preacher the illusive promise of universal peace. They submitted to agreements dictated by Fra Giovanni, which contain little else than a mutual amnesty; whether it were that their quarrels had been really without object, or that he had dexterously avoided to determine the real point of contention. But power and reputation suddenly acquired are transitory. Not satisfied with being the legislator and arbiter of Italian cities, he aimed at becoming their master; and abused the enthusiasm of Vicenza and Verona, to obtain a grant of absolute sovereignty. Changed from an apostle to an usurper, the fate of Fra Giovanni might be predicted; and he speedily gave place to those, who, though they made a worse use of their power, had, in the eyes of mankind, more natural pretensions to possess it (1).

(1) Tiraboschi, Storia della Letteratura, t. iv. p. 214. (a very well-written account.) Sismondi, t. ii. p. 484.

PART II.

State of Italy after the Extinction of the House of Swabia—Conquest of Naples by Charles of Anjou—The Lombard Republics become severally subject to Princes or Usurpers—The Visconti of Milan—Their Aggrandizement—Decline of the Imperial Authority over Italy—Internal State of Rome—Rienzi—Florence—her Forms of Government historically traced to the end of the fourteenth Century—Conquest of Pisa—Pisa—its Commerce, Naval Wars with Genoa, and Decay—Genoa—her Contentions with Venice—War of Chioggia—Government of Genoa—Venice—her Origin and Prosperity—Venetian Government—its Vices—Territorial Conquests of Venice—Military System of Italy—Companies of Adventure—1. foreign; Guarnieri, Hawkwood—and 2. native; Braccio, Sforza—Improvements in Military Science—Arms, offensive and defensive—Invention of Gunpowder—Naples—First Line of Anjou—Joanna I.—Ladislaus—Joanna II.—Francis Sforza becomes Duke of Milan—Alfonso, King of Naples—State of Italy during the fifteenth Century—Florence—Rise of the Medici, and Ruin of their Adversaries—Pretensions of Charles VIII. to Naples.

From the death of Frederic II. in 1250, to the invasion of Charles VIII. in 1494, a long and undistinguished period occurs, which it is impossible to break into any natural divisions. It is an age in many respects highly brilliant, the age of poetry and letters, of art and of continual improvement. Italy displayed an intellectual superiority in this period over the Transalpine nations, which certainly had not appeared since the destruction of the Roman empire. But her political history presents a labyrinth of petty facts, so obscure and of so little influence as not to arrest the attention; so intricate and incapable of classification, as to leave only confusion in the memory. The general events that are worthy of notice, and give a character to this long period, are the establishment of small tyrannies upon the ruins of republican government in most of the cities, the gradual rise of three considerable states, Milan, Florence, and Venice, the naval and commercial rivalry between the last city and Genoa, the final acquisition by the popes of their present territorial sovereignty, and the revolutions in the kingdom of Naples under the lines of Anjou and Aragon.

After the death of Frederic II., the distinctions of Guelf and Ghibelin became destitute of all rational meaning. The most odious crimes were constantly perpetrated, and the utmost miseries endured, for an echo and a shade, that mocked the deluded enthusiasts of faction. None of the Guelfs denied the nominal, but indefinite sovereignty of the empire; and beyond a name the Ghibelins themselves would have been little disposed to carry it. But the virulent hatreds attached to these words grew continually more implacable, till ages of ignominy and tyrannical government had extinguished every energetic passion in the bosoms of a degraded people.

In the fall of the house of Swabia, Rome appeared to have consummated her triumph; and although the Ghibelin party was for a little time able to maintain itself, and even to gain ground in the north of Italy, yet two events that occurred not long afterwards restored the ascendency of their adversaries. The first of these was

the fall of Eccelin da Romano, whose rapid successes in Lombardy appeared to threaten the establishment of a tremendous despotism, and induced a temporary union of Guelf and Ghibelin states, by which he was overthrown. The next, and far more important, was the change of dynasty in Naples. This kingdom had been occupied, after the death of Conrad, by his illegitimate brother, Manfred, in the behalf, as he at first pretended, of young Conradin the heir, but in fact as his own acquisition. He was a prince of an active and firm mind, well fitted for his difficult post, to whom the Ghibelins looked up as their head, and as the representative of his father. It was a natural object with the popes, independently of their ill will towards a son of Frederic II., to see a sovereign on whom they could better rely placed upon so neighbouring a throne. Charles, count of Anjou, brother of St. Louis, was tempted by them to lead a crusade (for as such all wars for the interest of Rome were now considered) against the Neapolitan usurper. The chance of a battle decided the fate of Naples, and had a striking influence upon the history of Europe for several centuries. Manfred was killed in the field; but there remained the legitimate heir of the Frederics, a boy of seventeen years old, Conradin, son of Conrad, who rashly, as we say at least after the event, attempted to regain his inheritance. He fell into the hands of Charles; and the voice of those rude ages, as well as of a more enlightened posterity, has united in branding with everlasting infamy the name of that prince, who did not hesitate to purchase the security of his own title by the public execution of an honourable competitor, or rather a rightful claimant of the throne he had usurped. With Conradin the house of Swabia was extinguished; but Constance the daughter of Manfred had transported *his* right to Sicily and Naples into the house of Aragon, by her marriage with Peter III.

1259

Affairs of Naples.

1254

Charles of Anjou.

1266

1268

Decline of the Ghibelin party.

This success of a monarch, selected by the Roman pontiffs as their particular champion, turned the tide of faction over all Italy. He expelled the Ghibelins from Florence, of which they had a few years before obtained a complete command by means of their memorable victory upon the river Arbia. After the fall of Conradin, that party was every where discouraged. Germany held out small hopes of support, even when the imperial throne, which had long been vacant, should be filled by one of her princes. The populace were, in almost every city, attached to the church, and to the name of Guelf; the kings of Naples employed their arms, and the popes their excommunications, so that for the remainder of the thirteenth century, the name of Ghibelin was a term of proscription in the majority of Lombard and Tuscan republics. Charles was constituted by the pope vicar-general in Tus-

cany. This was a new pretension of the Roman pontiffs, to name the lieutenants of the empire during its vacancy, which indeed could not be completely filled up without their consent. It soon, however, became evident, that he aimed at the sovereignty of Italy. Some of the popes themselves, Gregory X. and Nicholas IV., grew jealous of their own creature. At the congress of Cremona, in 1269, it was proposed to confer upon Charles the seigniory of all the Guelf cities; but the greater part were prudent enough to chuse him rather as a friend than a master (1).

The Lombard cities become subject to lords.

The cities of Lombardy, however, of either denomination, were no longer influenced by that generous disdain of one man's will, which is to republican governments what chastity is to women; a conservative principle, never to be reasoned upon, or subjected to calculations of utility. By force, or stratagem, or free consent, almost all the Lombard republics had already fallen under the yoke of some leading citizen, who became the lord (Signore) or, in the Grecian sense, tyrant of his country. The first instance of a voluntary delegation of sovereignty was that, above-mentioned, of Ferrara, which placed itself under the lord of Este. Eccelin made himself truly the tyrant of the cities beyond the Adige; and such experience ought naturally to have inspired the Italians with more universal abhorrence of despotism. But every danger appeared trivial in the eyes of exasperated factions, when compared with the ascendency of their adversaries. Weary of unceasing and useless contests, in which ruin fell with an alternate but equal hand upon either party, liberty withdrew from a people who disgraced her name; and the tumultuous, the brave, the intractable Lombards became eager to submit themselves to a master, and patient under the heaviest oppression. Or, if tyranny sometimes overstepped the limits of forbearance, and a seditious rising expelled the reigning prince, it was only to produce a change of hands, and transfer the impotent people to a different, and perhaps a worse, despotism (2). In many cities, not a conspiracy was planned, not a sigh was breathed in favour of republican government, after once they had passed under the sway of a single person. The progress indeed was gradual though sure, from limited to absolute, from temporary to hereditary power, from a just and conciliating rule to extortion

(1) Sismondi, t. iii. p. 417. Several however, including Milan, took an oath of fidelity to Charles the same year. Ibid. In 1273, he was lord of Alessandria and Piacenza, and received tribute from Milan, Bologna, and most Lombard cities. Muratori. It was evidently his intention to avail himself of the vacancy of the empire, and either to acquire that title himself, or at least to stand in the same relation as the emperors had done to the Italian states; which, according to the usage of the twelfth and thirteenth centuries, left them in possession of every thing that we call independence, with the reservation of a nominal allegiance.

(2) See an instance of the manner in which one tyrant was exchanged for another, in the fate of Passerino Bonaccorsi, lord of Mantua, in 1328. Luigi di Gonzaga surprised him, rode the city (corse la città) with a troop of horse, crying, Viva il popolo e muoja Messer Passerino e le sue gabelle! killed Passerino upon the spot, put his son to death in cold blood, e poi si fece signore della terra. Villani, l. x. c. 99., observes, like a good republican, that God had fulfilled in this the words of his Gospel, (query, what Gospel?) I will slay my enemy by my nemy: abbattendo l' uno tiranno per l' altro.

and cruelty. But before the middle of the fourteenth century, at the latest, all those cities which had spurned at the faintest mark of submission to the emperors, lost even the recollection of self-government, and were bequeathed, like an undoubted patrimony, among the children of their new lords. Such is the progress of usurpation; and such the vengeance that Heaven reserves for those who waste in licence and faction its first of social blessings, liberty (1).

The Torriani and Visconti at Milan.

The city most distinguished, in both wars against the house of Swabia, for an unconquerable attachment to republican institutions, was the first to sacrifice them in a few years after the death of Frederic II. Milan had for a considerable time been agitated by civil dissensions between the nobility and inferior citizens. These parties were pretty equally balanced, and their success was consequently alternate. Each had its own podestà, as a party-leader, distinct from the legitimate magistrate of the city. At the head of the nobility was their archbishop Fra Leon Perego; the people chose Martin della Torre, one of a noble family which had ambitiously sided with the democratic faction. In consequence of the crime of a nobleman, who had murdered one of his creditors, the two parties took up arms in 1257. A civil war of various success, and interrupted by several pacifications, which, in that unhappy temper, could not be durable, was terminated in about two years by the entire discomfiture of the aristocracy, and by the election of Martin della Torre as chief and lord (capitano e signore) of the people. Though the Milanese did not probably intend to renounce the sovereignty resident in their general assemblies, yet they soon lost the republican spirit; five in succession of the family della Torre might be said to reign in Milan; each indeed by a formal election, but with an implied recognition of a sort of hereditary title. Twenty years afterwards, the Visconti, a family of opposite interests, supplanted the Torriani at Milan, and the rivality between these great houses was not at an end till the final establishment of Matteo Visconti in 1313; but the people were not otherwise considered than as aiding by force the one or other party, and at most deciding between the pretensions of their masters.

Revival of the Ghibelin party.

The vigour and concert infused into the Guelf party by the successes of Charles of Anjou was not very durable. That prince was soon involved in a protracted and unfortunate quarrel with the kings of Aragon, to whose protection his revolted subjects in Italy had recurred. On the other hand, several men of energetic character retrieved the Ghibelin interests in Lom-

(1) See the observations of Sismondi, t. iv. p. 212., on the conduct of the Lombard signori, (I know not of any English word that characterizes them, except *tyrant* in its primitive sense,) during the first period of their dominion. They were generally chosen in an assembly of the people, sometimes for a short term, prolonged in the same manner. The people was consulted upon several occasions. At Milan there was a council of 900 nobles, not permanent or representative, but selected and convened at the discretion of the government, throughout the reigns of the Visconti. Corio, p. 519. 583. Thus, as Sismondi remarks, they respected the sovereignt of the people, while they destroyed its liberty.

bardy, and even in the Tuscan cities. The Visconti were acknowledged heads of that faction. A family early established as lords of Verona, the della Scala, maintained the credit of the same denomination between the Adige and the Adriatic. Castruccio Castracani, an adventurer of remarkable ability, rendered himself prince of Lucca, and drew over a formidable accession to the imperial side from the heart of the church-party in Tuscany, though his death restored the ancient order of things. The inferior tyrants were partly Guelf, partly Ghibelin, according to local revolutions; but upon the whole, the latter acquired a gradual ascendency. Those indeed who cared for the independence of Italy, or for their own power, had far less to fear from the phantom of imperial prerogatives, long intermitted, and incapable of being enforced, than from the new race of foreign princes, whom the church had substituted for the house of Swabia. The Angevin kings of Naples were sovereigns of Provence, and from thence easily encroached upon Piedmont, and threatened the Milanese. Robert, the third of this line, almost openly aspired, like his grandfather Charles I., to a real sovereignty over Italy. His offers of assistance to Guelf cities in war were always coupled with a demand of the sovereignty. Many yielded to his ambition; and even Florence twice bestowed upon him a temporary dictatorship. In 1314, he was acknowledged lord of Lucca, Florence, Pavia, Alessandria, Bergamo, and the cities of Romagna. In 1318, the Guelfs of Genoa found no other resource against the Ghibelin emigrants who were under their walls, than to resign their liberties to the king of Naples for the term of ten years, which he procured to be renewed for six more. The Avignon popes, especially John XXII., out of blind hatred to the emperor Louis of Bavaria and the Visconti family, abetted all these measures of ambition. But they were rendered abortive by Robert's death, and the subsequent disturbances of his kingdom.

Kings of Naples aim at command of Italy.

At the latter end of the thirteenth century, there were almost as many princes in the north of Italy, as there had been free cities in the preceding age. Their equality, and the frequent domestic revolutions which made their seat unsteady, kept them for a while from encroaching on each other. Gradually, however, they became less numerous; a quantity of obscure tyrants were swept away from the smaller cities; and the people, careless or hopeless of liberty, were glad to exchange the rule of despicable petty usurpers for that of more distinguished and powerful families. About the year 1350, the central parts of Lombardy had fallen under the dominion of the Visconti. Four other houses occupied the second rank; that of Este at Ferrara and Modena; of Scala at Verona, which under Cane and Mastino della Scala had seemed likely to contest with the lords of Milan the supremacy over Lombardy; of Carrara at Padua, which later than any Lombard city had resigned her

State of Lombardy in the middle of the fourteenth century.

liberty; and of Gonzaga at Mantua, which, without ever obtaining any material extension of territory, continued, probably for that reason, to reign undisturbed till the eighteenth century. But these united were hardly a match, as they sometimes experienced, for the Visconti. That family, the object of every league formed in Italy for more than fifty years, in constant hostility to the church, and well enured to interdicts and excommunications, producing no one man of military talents, but fertile of tyrants detested for their perfidiousness and cruelty, was nevertheless enabled, with almost uninterrupted success, to add city after city to the dominion of Milan, till it absorbed all the north of Italy. Under Gian Galeazzo, whose reign began in 1385, the viper (their armorial bearing) assumed indeed a menacing attitude (1): he overturned the great family of Scala, and annexed their extensive possessions to his own; no power intervened from Vercelli in Piedmont to Feltre and Belluno; while the free cities of Tuscany, Pisa, Siena, Perugia, and even Bologna, as if by a kind of witchcraft, voluntarily called in a dissembling tyrant as their master.

Power of the Visconti.

Powerful as the Visconti were in Italy, they were long in washing out the tinge of recent usurpation, which humbled them before the legitimate dynasties of Europe. At the siege of Genoa in 1318, Robert king of Naples rejected with contempt the challenge of Marco Visconti to decide their quarrel in single combat (2). But the pride of sovereigns, like that of private men, is easily set aside for their interest. Galeazzo Visconti purchased with 100,000 florins a daughter of France for his son, which the French historians mention as a deplorable humiliation for their crown. A few years afterwards, Lionel duke of Clarence, second son of Edward III., certainly not an inferior match, espoused Galeazzo's daughter. Both these connexions were short-lived; but the union of Valentine, daughter of Gian Galeazzo, with the duke of Orleans, in 1389, produced far more important consequences, and served to transmit a claim to her descendants, Louis XII. and Francis I., from which the long calamities of Italy at the beginning of the sixteenth century were chiefly derived. Not long after this marriage, the Visconti were tacitly admitted among the reigning princes, by the erection of Milan into a duchy under letters patent of the emperor Wenceslaus (3).

1395

The imperial authority over Italy was almost entirely suspended after the death of Frederic II. A long interregnum followed in Germany; and when the vacancy was supplied by Rodolph of Hapsburg, he was

Relations of the empire with Italy.

1273

(1) Allusions to heraldry are very common in the Italian writers. All the historians of the fourteenth century habitually use the viper (il biscione) as a synonym for the power of Milan.

(2) Della qual cosa il rè molto sdegno ne prese. Villani, l. ix. c. 28. It was reckoned a mésalliance, as Dante tells us, in the widow of Nino di Gallura, a nobleman of Pisa, though a sort of prince in Sardinia, to marry one of the Visconti. Purgatorio, cant. 8.

(3) Corio, p. 538.

too prudent to dissipate his moderate resources, where the great house of Swabia had failed. About forty years afterwards, the emperor Henry of Luxemburg, a prince, like Rodolph, of small hereditary possessions, but active and discreet, availed himself of the ancient respect borne to the imperial name, and the mutual jealousies of the Italians, to recover for a very short time a remarkable influence. But, though professing neutrality, and desire of union between the Guelfs and Ghibelins, he could not succeed in removing the distrust of the former; his exigencies impelled him to large demands of money; and the Italians, when they counted his scanty German cavalry, perceived that obedience was altogether a matter of their own choice. Henry died, however, in time to save himself from any decisive reverse. His successors, Louis of Bavaria, and Charles IV., descended from the Alps with similar motives, but after some temporary good fortune, were obliged to return, not without discredit. Yet the Italians never broke that almost invisible thread which connected them with Germany; the fallacious name of Roman emperor still challenged their allegiance, though conferred by seven Teutonic electors without their concurrence. Even Florence, the most independent and high-spirited of republics, was induced to make a treaty with Charles IV. in 1355, which, while it confirmed all her actual liberties, not a little, by that very confirmation, affected her sovereignty (1). This deference to the supposed prerogatives of the empire, even while they were least formidable, was partly owing to jealousy of French or Neapolitan interference, partly to the national hatred of the popes who had seceded to Avignon, and in some degree to a misplaced respect for antiquity, to which the revival of letters had given birth. The great civilians, and the much greater poets of the fourteenth century, taught Italy to consider her emperor as a dormant sovereign, to whom her various principalities and republics were subordinate, and during whose absence alone they had legitimate authority.

Henry VII. 1309

Cession of Romagna to the popes.

In one part, however, of that country, the empire had, soon after the commencement of this period, spontaneously renounced its sovereignty. From the æra of Pepin's donation, confirmed and extended by many subsequent

(1) The republic of Florence was at this time in considerable peril from a coalition of the Tuscan cities against her, which rendered the protection of the emperor convenient. But it was very reluctantly that she acquiesced in even a nominal submission to his authority. The Florentine envoys, in their first address, would only use the words, Santa Corona, or Serenissimo Principe; senza ricordar o imperadore, o dimostrargli alcuna reverenza di suggezione, domandando che il commune di Firenze volea, essendogli ubbidiente, le cotali e le cotali franchigie per mantenere il suo popolo nell' usata libertade. Mat. Villani, p. 274. (Script. Rer. Ital. t. xiv.) This style made Charles angry; and the city soon atoned for it by accepting his privilege. In this, it must be owned, he assumes a decided tone of sovereignty. The gonfalonier and priors are declared to be his vicars. The deputies of the city did homage and swore obedience. Circumstances induced the principal citizens to make this submission, which they knew to be merely nominal. But the high-spirited people, not so indifferent about names, came into it very unwillingly. The treaty was seven times proposed, and as often rejected in the consiglio del popolo, before their feelings were subdued. Its publication was received with no marks of joy. The public buildings alone were illuminated: but a sad silence indicated the wounded pride of every private citizen. M. Villani, p. 286. 290. Sismondi, t. vi. p. 388.

charters, the Holy See had tolerably just pretensions to the province entitled Romagna, or the exarchate of Ravenna. But the popes, whose menaces were dreaded at the extremities of Europe, were still very weak as temporal princes. Even Innocent III. had never been able to obtain possession of this part of St. Peter's patrimony. The circumstances of Rodolph's accession inspired Nicholas III. with more confidence. That emperor granted a confirmation of every thing included in the donations of Louis I., Otho, and his other predecessors; but was still reluctant or ashamed to renounce his imperial rights. Accordingly his charter is expressed to be granted without diminution of the empire (sine demembratione imperii); and his chancellor received an oath of fidelity from the cities of Romagna. But the pope insisting firmly on his own claim, Rodolph discreetly avoided involving himself in a fatal quarrel, and, in 1278, absolutely released the imperial supremacy over all the dominions already granted to the Holy See (1).

This is a leading epoch in the temporal monarchy of Rome. But she stood only in the place of the emperor; and her ultimate sovereignty was compatible with the practical independence of the free cities, or of the usurpers who had risen up among them. Bologna, Faenza, Rimini, and Ravenna, with many others less considerable, took an oath indeed to the pope, but continued to regulate both their internal concerns and foreign relations at their own discretion. The first of these cities was far pre-eminent above the rest for population and renown, and, though not without several intermissions, preserved a republican character till the end of the fourteenth century. The rest were soon enslaved by petty tyrants, more obscure than those of Lombardy. It was not easy for the pontiffs of Avignon to reinstate themselves in a dominion which they seemed to have abandoned; but they made several attempts to recover it, sometimes with spiritual arms, sometimes with the more efficacious aid of mercenary troops. The annals of this part of Italy are peculiarly uninteresting.

Internal state of Rome.

Rome itself was, throughout the middle ages, very little disposed to acquiesce in the government of her bishop. His rights were indefinite, and unconfirmed by positive law; the emperor was long sovereign, the people always meant to be free. Besides the common causes of insubordination and anarchy among the Italians, which applied equally to the capital city, other sentiments more peculiar to Rome preserved a continual, though not uniform, influence for many centuries. There still remained enough, in the wreck of that vast inheritance, to swell the bosoms of her citizens with a consciousness of their own dignity. They bore the venerable name, they contemplated the monuments of art and empire, and forgot, in the illusions of national pride, that the tutelar gods of the buildings were departed for ever. About the

(1) Muratori, ad ann. 1274. 1275. 1278. Sismondi, t. iii. p. 461.

middle of the twelfth century, these recollections were heightened by the eloquence of Arnold of Brescia, a political heretic who preached against the temporal jurisdiction of the hierarchy. In a temporary intoxication of fancy, they were led to make a ridiculous shew of self-importance towards Frederic Barbarossa, when he came to receive the imperial crown; but the German sternly chided their ostentation, and chastised their resistance (1). With the popes they could deal more securely. Several of them were expelled from Rome during that age by the seditious citizens. Lucius II. died of hurts received in a tumult. The government was vested in fifty-six senators, annually chosen by the people, through the intervention of an electoral body, ten delegates from each of the thirteen districts of the city (2). This constitution lasted not quite fifty years. In 1192, Rome imitated the prevailing fashion by the appointment of an annual foreign magistrate (3). Except in name, the senator of Rome appears to have perfectly resembled the podestà of other cities. This magistrate superseded the representative senate who had proved by no means adequate to controul the most lawless aristocracy of Italy. I shall not repeat the story of Brancaleon's rigorous and inflexible justice, which a great historian has already drawn from obscurity. It illustrates not the annals of Rome alone, but the general state of Italian society, the nature of a podestà's duty and the difficulties of its execution. The office of senator survives after more than six hundred years; a foreign magistrate still resides in the Capitol; but he no longer wields the 'iron flail' (4) of Brancaleon, and his nomination proceeds of course from the supreme pontiff, not from the people. In the twelfth and thirteenth centuries, the senate, and the senator who succeeded them, exercised one distinguishing attribute of sovereignty, that of coining gold and silver money. Some of their coins still exist, with legends in a very republican tone (5). Doubtless the temporal authority of the popes varied according to their personal character. Innocent III. had much more than his predecessors for almost a century, or than some of his successors. He made the senator take an oath of fealty to him, which, though not very comprehensive, must have passed in those times as a recognition of his superiority (6).

¶ Though there was much less obedience to any legitimate power at Rome than any where else in Italy, even during the thirteenth century, yet after the secession of the popes to Avignon, their own

(1) The impertinent address of a Roman orator to Frederic, and his answer, are preserved in Otho of Frisingen, l. ii. c. 22., but so much at length, that we may suspect some exaggeration. Otho is rather rhetorical. They may be read in Gibbon, c. 69.

(2) Sismondi, t. ii. p. 36. Besides Sismondi and Muratori, I would refer for the history of Rome during the middle ages to the last chapters of Gibbon's Decline and Fall.

(3) Sismondi, t. ii. p. 308.

(4) The readers of Spenser will recollect the iron flail of Talus, the attendant of Arthegal, emblematic of the severe justice of the lord deputy of Ireland, Sir Arthur Grey, shadowed under that allegory.

(5) Gibbon, vol. xii. p. 289. Muratori, *Antiquit.* Ital. Dissert. 27.

(6) Sismondi, p. 309.

city was left in a far worse condition than before. Disorders of every kind, tumult and robbery, prevailed in the streets. The Roman nobility were engaged in perpetual war with each other. Not content with their own fortified palaces, they turned the sacred monuments of antiquity into strong holds, and consummated the destruction of time and conquest. At no period has the city endured such irreparable injuries; nor was the downfall of the western empire so fatal to its capital, as the contemptible feuds of the Orsini and Colonna families. Whatever there was of government, whether administered by a legate from Avignon, or by the municipal authorities, had lost all hold on these powerful barons. In the midst of this degradation and wretchedness, an obscure man, Nicola di Rienzi, conceived the project of restoring Rome not only to good order, but even to her ancient greatness. He had received an education beyond his birth, and nourished his mind with the study of the best writers. After many harangues to the people, which the nobility, blinded by their self-confidence, did not attempt to repress, Rienzi suddenly excited an insurrection, and obtained complete success. He was placed at the head of a new government, with the title of Tribune, and with almost unlimited power. The first effects of this revolution were wonderful. All the nobles submitted, though with great reluctance; the roads were cleared of robbers; tranquillity was restored at home; some severe examples of justice intimidated offenders; and the tribune was regarded by all the people as the destined restorer of Rome and Italy. Though the court of Avignon could not approve of such an usurpation, it temporized enough not directly to oppose it. Most of the Italian republics, and some of the princes, sent ambassadors, and seemed to recognize pretensions which were tolerably ostentatious. The king of Hungary and queen of Naples submitted their quarrel to the arbitration of Rienzi, who did not, however, undertake to decide upon it. But this sudden exaltation intoxicated his understanding, and exhibited failings entirely incompatible with his elevated condition. If Rienzi had lived in our own age, his talents, which were really great, would have found their proper orbit. For his character was one not unusual among literary politicians; a combination of knowledge, eloquence, and enthusiasm for ideal excellence, with vanity, inexperience of mankind, unsteadiness and physical timidity. As these latter qualities became conspicuous, they eclipsed his virtues and caused his benefits to be forgotten; he was compelled to abdicate his government, and retire into exile. After several years, some of which he passed in the prisons of Avignon, Rienzi was brought back to Rome, with the title of senator, and under the command of the legate. It was supposed that the Romans, who had returned to their habits of insubordination, would gladly submit to their favourite tribune. And this proved the case for a few months; but after that time they

The Tribune Rienzi. 1347

ceased altogether to respect a man who so little respected himself in accepting a station where he could no longer be free, and Rienzi was killed in a sedition (1).

Subsequent affairs of Rome.

Once more, not long after the death of Rienzi, the freedom of Rome seems to have revived in republican institutions, though with names less calculated to inspire peculiar recollections. Magistrates called bannerets, chosen from the thirteen districts of the city, with a militia of three thousand citizens at their command, were placed at the head of this commonwealth. The great object of this new organization was to intimidate the Roman nobility, whose outrages, in the total absence of government, had grown intolerable. Several of them were hanged the first year by order of the bannerets. The citizens, however, had no serious intention of throwing off their subjection to the popes. They provided for their own security, on account of the lamentable secession and neglect of those who claimed allegiance while they denied protection. But they were ready to acknowledge and welcome back their bishop as their sovereign. Even without this, they surrendered their republican constitution in 1362, it does not appear for what reason, and permitted the legate of Innocent VI. to assume the government (2). We find, however, the institution of bannerets revived, and in full authority some years afterwards. But the internal history of Rome appears to be obscure, and I have not had opportunities of examining it minutely. Some degree of political freedom the city probably enjoyed during the schism of the church: but it is not easy to discriminate the assertion of legitimate privileges, from the licentious tumults of the barons or populace. In 1435, the Romans formally took away the government from Eugenius IV., and elected seven signiors or chief magistrates, like the priors of Florence (3). But this revolution was not of long continuance. On the death of Eugenius, the citizens deliberated upon proposing a constitutional charter to the future pope. Stephen Porcaro, a man of good family, and inflamed by a strong spirit of liberty, was one of their principal instigators. But the people did not sufficiently partake of that spirit. No measures were taken upon this occasion; and Porcaro, whose ardent imagination disguised the hopelessness of his enterprize, tampering in a fresh

(1) Sismondi, t. v. c. 37.; t. vi. p. 201. Gibbon, c. 70. De Sade, Vie de Pétrarque, t. ii. passim. Tiraboschi, t. vi. p. 339. It is difficult to resist the admiration, which all the romantic circumstances of Rienzi's history tend to excite, and to which Petrarch so blindly gave way. That great man's characteristic excellence was not good common sense. He had imbibed two notions, of which it is hard to say which was the more absurd; that Rome had a legitimate right to all her ancient authority over the rest of the world; and that she was likely to recover this authority in consequence of the revolution produced by Rienzi. Giovanni Villani, living at Florence, and a staunch republican, formed a very different estimate, which weighs more than the enthusiastic panegyrics of Petrarch. La detta impresa del tribuno era un' opera fantastica, e di poco durare. l. xii. c. 90. An illustrious female writer has drawn with a single stroke the character of Rienzi, Crescentius, and Arnold of Brescia, the fond restorers of Roman liberty, *qui ont pris les souvenirs pour les espérances.* Corinne, t. i. p. 159. Could Tacitus have excelled this?

(2) Matt. Villani, p. 576. 604. 709. Sismondi, t. v. p. 92. He seems to have overlooked the former period of government by bannerets, and refers their institution to 1375.

(3) Script. Rerum Italic. t. iii. pars 2. p. 1138.

conspiracy, was put to death under the pontificate of Nicholas V. (1).

Cities of Tuscany. Florence.

The province of Tuscany continued longer than Lombardy under the government of an imperial lieutenant. It was not till about the middle of the twelfth century that the cities of Florence, Lucca, Pisa, Siena, Arezzo, Pistoia, and several less considerable, which might perhaps have already their own elected magistrates, became independent republics. Their history is, with the exception of Pisa, very scanty till the death of Frederic II. The earliest fact of any importance recorded of Florence occurs in 1184, when it is said that Frederic Barbarossa took from her the dominion over the district or county, and restored it to the rural nobility, on account of her attachment to the church (2). This I chiefly mention to illustrate the system pursued by the cities, of bringing the territorial proprietors in their neighbourhood under subjection. During the reign of Frederic II., Florence became, as far as she was able, an ally of the popes. There was indeed a strong Ghibelin party, comprehending many of the greatest families, which occasionally predominated through the assistance of the emperor. It seems, however, to have existed chiefly among the nobility; the spirit of the people was thoroughly Guelf. After several revolutions, accompanied by alternate proscription and demolition of houses, the Guelf party, through the assistance of Charles of Anjou, obtained a final ascendency in 1266; and after one or two unavailing schemes of accommodation, it was established as a fundamental law in the Florentine constitution, that no person of Ghibelin ancestry could be admitted to offices of public trust; which, in such a government, was in effect an exclusion from the privileges of citizenship.

Government of Florence.

The changes of internal government and vicissitudes of success among factions were so frequent at Florence, for many years after this time, that she is compared by her great banished poet to a sick man, who, unable to rest, gives himself momentary ease, by continual change of posture in his bed (3). They did not become much less numerous after the age of Dante. Yet the revolutions of Florence should perhaps be considered as no more than a necessary price of her liberty. It was her boast and her happiness to have escaped, except for one short period, that odious rule of vile usurpers, under which so many other free cities had been crushed. A sketch of the constitution of so famous a republic ought not to be omitted in this place. Nothing else in the history of Italy after Frederic II. is so worthy of our attention (4).

The basis of the Florentine polity was a division of the citizens

(1) Script. Rer. Ital. t. iii. pars 2. p. 1131. 1135. Sismondi, t. x. p. 18.

(2) Villani, l. v. c. 12.

(3) E se ben ti ricordi, e vedi il lume,
Vedrai te somigliante a quella inferma,
Che non può trovar posa in sù le piume,
Ma con dar volta suo dolore scherma.
Purgatorio, cant. vi.

(4) I have found considerable difficulties in this part of my task, no author with whom I am acquainted giving a tolerable view of the Florentine government, except M. Sismondi, who is himself not always satisfactory.

exercising commerce, into their several companies or *arts*. These were at first twelve, seven called the greater arts, and five lesser; but the latter were gradually increased to fourteen. The seven greater arts were those of lawyers and notaries, of dealers in foreign cloth, called sometimes Calimala, of bankers or money-changers, of woollen-drapers, of physicians and druggists, of dealers in silk, and of furriers. The inferior arts were those of retailers of cloth, butchers, smiths, shoemakers and builders. This division, so far at least as regarded the greater arts, was as old as the beginning of the thirteenth century (1). But it was fully established, and rendered essential to the constitution in 1266. By the provisions made in that year, each of the seven greater arts had a council of its own, a chief magistrate or consul who administered justice in civil causes to all members of his company, and a banneret (gonfaloniere) or military officer, to whose standard they repaired, when any attempt was made to disturb the peace of the city.

The administration of criminal justice belonged at Florence, as at other cities, to a foreign podestà, or rather to two foreign magistrates, the podestà, and the capitano del popolo, whose jurisdiction, so far as I can trace it, appears to have been concurrent (2). In the first part of the thirteenth century, the authority of the podestà may have been more extensive than afterwards These offices were preserved till the innovations of the Medici. The domestic magistracies underwent more changes. Instead of consuls, which had been the first denomination of the chief magistrates of Florence, a college of twelve or fourteen persons called Anziani or Buonuomini, but varying in name as well as number according to revolutions of party, was established about the middle of the thirteenth century, to direct public affairs (3). This order was entirely changed in 1282, and gave place to a new form of supreme magistracy, which lasted till the extinction of the republic. Six priors, elected every two months, from each of the six quarters of the city, and from each of the greater arts, except that of lawyers, constituted an executive magistracy. They lived, during their continuance in office, in a palace belonging to the city, and were maintained at the public cost. The actual priors, jointly with the chiefs and councils (usually called la capitudine) of the seven greater arts, and with certain adjuncts (arroti) named by themselves, elected by ballot their successors. Such was the practice for about forty years after this government was established. But an innovation, begun in 1324, and perfected four years afterwards, gave a peculiar character to the constitution of Florence. A lively and ambitious people, not merely jealous of their public sovereignty, but deeming its exercise a matter of personal enjoyment, aware, at

(1) Ammirato ad ann. 1204 et 1225. Villani intimates, l. vii. c. 13., that the arts existed as commercial companies before 1266. Machiavelli and Sismondi express themselves rather inaccurately, as if they had been erected at that time, which indeed is the æra of their political importance.

(2) Matteo Villani, p. 194. G. Villani places the institution of the podestà in 1207; we find it however as early as 1184. Ammirato.

(3) G. Villani, l. vi. c. 39.

the same time, that the will of the whole body could neither be immediately expressed on all occasions, nor even through chosen representatives, without the risk of violence and partiality, fell upon the singular idea of admitting all citizens, not unworthy by their station or conduct, to offices of magistracy by rotation. Lists were separately made out by the priors, the twelve buonuomini, the chiefs and councils of arts, the bannerets and other respectable persons, of all citizens, Guelfs by origin, turned of thirty years of age, and, in their judgment, worthy of public trust. The lists thus formed were then united, and those who had composed them meeting together, in number ninety-seven, proceeded to ballot upon every name. Whoever obtained sixty-eight *black* balls was placed upon the reformed list; and all the names it contained, being put on separate tickets into a bag or purse (imborsati), were drawn successively as the magistracies were renewed. As there were above fifty of these, none of which could be held for more than four months, several hundred citizens were called in rotation to bear their share in the government within two years. But at the expiration of every two years, the scrutiny was renewed, and fresh names were mingled with those which still continued undrawn; so that accident might deprive a man for life of his portion of sovereignty (1).

Four councils had been established by the constitution of 1266, for the decision of all propositions laid before them by the executive magistrates, whether of a legislative nature, or relating to public policy. These were now abrogated; and in their places were substituted one of 300 members, all plebeians, called consiglio di popolo, and one of 250, called consiglio di comune, into which the nobles might enter. These were changed by the same rotation as the magistracies, every four months (2). A parliament, or general assembly of the Florentine people, was rarely convoked; but the leading principle of a democratical republic, the ultimate sovereignty of the multitude, was not forgotten. This constitution of 1324 was fixed by the citizens at large in a parliament; and the same sanction was given to those temporary delegations of the signiory to a prince, which occasionally took place. What is technically called by their historians, *farsi popolo*, was the assembly of a parliament, or a resolution of all derivative powers into the immediate operation of the popular will.

The ancient government of this republic appears to have been chiefly in the hands of its nobility. These were very numerous, and possessed large estates in the district. But by the constitution of 1266, which was nearly coincident with the triumph of the Guelf faction, the essential powers of magistracy, as well as of legislation,

(1) Villani, l. ix. c. 27.; l. x. c. 110.; l. xi. c. 105. Sismondi, t. v. p. 174. This species of lottery, recommending itself by an apparent fairness, and incompatibility with undue influence, was speedily adopted in all the neighbouring republics, and has always continued, according to Sismondi, in Lucca, and in those cities of the ecclesiastical state which preserved the privilege of chusing their municipal officers. p. 93.

(2) Id. ibid.

were thrown into the scale of the commons. The colleges of arts, whose functions became so eminent, were altogether commercial. Many indeed of the nobles enrolled themselves in these companies, and were among the most conspicuous merchants of Florence. These were not excluded from the executive college of the priors, at its first institution in 1282. It was necessary, however, to belong to one or other of the greater arts in order to reach that magistracy. The majority, therefore, of the ancient families saw themselves pushed aside from the helm, which was entrusted to a class whom they naturally held in contempt.

It does not appear that the nobility made any overt opposition to these democratical institutions. Confident in a force beyond the law, they cared less for what the law might provide against them. They still retained the proud spirit of personal independence, which had belonged to their ancestors in the fastnesses of the Apennines. Though the laws of Florence, and a change in Italian customs, had transplanted their residence to the city, it was in strong and lofty houses that they dwelt, among their kindred, and among the fellows of their rank. Notwithstanding the tenor of the constitution, Florence was, for some years after the establishment of priors, incapable of resisting the violence of her nobility. Her historians all attest the outrages and assassinations committed by them on the inferior people. It was in vain that justice was offered by the podestà and the capitano del popolo. Witnesses dared not to appear against a noble offender; or if, on a complaint, the officer of justice arrested the accused, his family made common cause to rescue their kinsman, and the populace rose in defence of the laws, till the city was a scene of tumult and bloodshed. I have already alluded to this insubordination of the higher classes as general in the Italian republics; but the Florentine writers, being fuller than the rest, are our best specific testimonies (1).

1295 The dissensions between the patrician and plebeian orders ran very high, when Giano della Bella, a man of ancient lineage, but attached, without ambitious views, so far as appears, though not without passion, to the popular side, introduced a series of enactments exceedingly disadvantageous to the ancient aristocracy. The first of these was the appointment of an executive officer, the gonfalonier of justice, whose duty it was to enforce the sentences of the podestà and capitano del popolo, in cases where the ordinary officers were insufficient. A thousand citizens, afterwards increased to four times that number, were bound to obey his commands. They were distributed into companies, the gonfaloniers or captains of which became a sort of corporation or college, and a constituent part of the government. This new militia seems to have superseded that of the companies of arts,

(1) Villani, l. vii. c. 113.; l. viii. c. 8. Ammirato, Storia Fiorentina, l. iv. in cominciamento.

which I have not observed to be mentioned at any later period. The gonfalonier of justice was part of the signiory along with the priors, of whom he was reckoned the president, and changed like them every two months. He was, in fact, the first magistrate of Florence (1). If Giano della Bella had trusted to the efficacy of this new security for justice, his fame would have been beyond reproach. But he followed it up by harsher provisions. The nobility were now made absolutely ineligible to the office of prior. For an offence committed by one of a noble family, his relations were declared responsible in a penalty of 3,000 pounds. And, to obviate the difficulty arising from the frequent intimidation of witnesses, it was provided, that common fame, attested by two credible persons, should be sufficient for the condemnation of a nobleman (2).

These are the famous ordinances of justice, which passed at Florence for the great charter of her democracy. They have been reprobated in later times as scandalously unjust, and I have little inclination to defend them. The last, especially, was a violation of those eternal principles, which forbid us, for any calculations of advantage, to risk the sacrifice of innocent blood. But it is impossible not to perceive, that the same unjust severity has sometimes, under a like pretext of necessity, been applied to the weaker classes of the people, which they were in this instance able to exercise towards their natural superiors.

The nobility were soon aware of the position in which they stood. For half a century their great object was to procure the relaxation of the ordinances of justice. But they had no success with an elated enemy. In three years time, indeed, Giano della Bella, the author of these institutions, was driven into exile; a conspicuous, though by no means singular, proof of Florentine ingratitude (3). The wealth and physical strength of the nobles were however untouched; and their influence must always have been considerable. In the great feuds of the Bianchi and Neri, the ancient families were most distinguished. No man plays a greater part in the annals of Florence, at the beginning of the fourteenth century, than Corso Donati, chief of the latter faction, who might pass as representative of the turbulent, intrepid, ambitious citizen-noble of an Italian republic (4). But the laws gradually became more sure of obedience; the sort of proscription which attended the ancient nobles lowered their spirit, while a new aristocracy

(1) It is to be regretted, that the accomplished biographer of Lorenzo de' Medici should have taken no pains to inform himself of the most ordinary particulars in the constitution of Florence. Among many other errors, he says, vol. ii. p. 51. 8th edit., that the gonfalonier of justice was subordinate to the delegated mechanics, (a bad expression,) or priori dell' arti, whose number too he augments to ten. The proper style of the republic seems to run thus: I priori dell' arti e gonfaloniere di giustizia, il popolo e 'l comune della città di Firenze. G. Villani. l. xii. c. 109.

(2) Villani, l. viii. c. 1. Ammirato, p. 188. edit. 1647. A magistrate, called l' esecutor della giustizia, was appointed with authority equal to that of the podestà, for the special purpose of watching over the observation of the ordinances of justice. Ammirato, p. 666.

(3) Villani, l. viii. c. 8.

(4) Dino Compagni. Villani.

began to raise its head; the aristocracy of families who, after filling the highest magistracies for two or three generations, obtained an hereditary importance, which answered the purpose of mere unequivocal nobility; just as in ancient Rome, plebeian families, by admission to curule offices, acquired the character and appellation of nobility, and were only distinguishable by their genealogy from the original patricians (1). Florence had her plebeian nobles (popolani grandi) as well as Rome; the Peruzzi, the Ricci, the Albizi, the Medici, correspond to the Catos, the Pompeys, the Brutuses, and the Antonies. But at Rome the two orders, after an equal partition of the highest offices, were content to respect their mutual privileges; at Florence the commoners preserved a rigorous monopoly, and the distinction of high birth was, that it debarred men from political franchises and civil justice (2).

This second aristocracy did not obtain much more of the popular affection than that which it superseded. Public outrage and violation of law became less frequent; but the new leaders of Florence are accused of continual misgovernment at home and abroad, and sometimes of peculation. There was of course a strong antipathy between the leading commoners and the ancient nobles; both were disliked by the people. In order to keep the nobles under more controul, the governing party more than once introduced a new foreign magistrate, with the title of captain of defence, (della guardia,)
1336 whom they invested with an almost unbounded crimi-
1340 nal jurisdiction. One Gabrielli of Agobbio was twice fetched for this purpose; and in each case he behaved in so tyrannical a manner, as to occasion a tumult (3). His office however was of short duration, and the title at least did not import a sovereign command. But very soon afterwards Florence had to experience one taste of a cup which her neighbours had drunk off to the dregs, and to animate her magnanimous love of freedom by a knowledge of the calamities of tyranny.

A war with Pisa, unsuccessfully, if not unskilfully, conducted, gave rise to such dissatisfaction in the city, that the leading commoners had recourse to an appointment something like that of Gabrielli, and from similar motives. Walter de Brienne, duke of Athens, was descended from one of the French crusaders who had dismembered the Grecian empire in the preceding century; but his father, defeated in battle, had lost the principality along with his life, and the titular duke was an adventurer in the court of France. He had been, however, slightly known at Florence on a former

(1) La nobiltà civile, se bene non in baronaggi, è capace di grandissimi honori, perciochè esercitando i supremi magistrati della sua patria, viene spesso a comandare a capitani d' eserciti e ella stessa per se o in mare, o in terra, molte volta i supremi carichi adopera. E tale è la Fiorentina nobiltà. Ammirato, delle Famiglie Fiorentine. Firenze, 1614. p. 25.

(2) Quello, che all' altre città suole recare splendore, in Firenze era dannoso, o veramente vano e inutile, says Ammirato of nobility. Storia Fiorentina, p. 161.

(3) Villani, l. xi. c. 39. and 117.

occasion. There was an uniform maxim among the Italian republics, that extraordinary powers should be conferred upon none but strangers. The duke of Athens was accordingly pitched upon for the military command, which was united with domestic jurisdiction. This appears to have been promoted by the governing party, in order to curb the nobility; but they were soon undeceived in their expectations. The first act of the duke of Athens was to bring four of the most eminent commoners to capital punishment for military offences. These sentences, whether just or otherwise, gave much pleasure to the nobles, who had so frequently been exposed to similar severity, and to the populace, who are naturally pleased with the humiliation of their superiors. Both of these were caressed by the duke, and both conspired, with blind passion, to second his ambitious views. It was proposed and carried in a full parliament, or assembly of the people, to bestow upon him the signiory for life. The real friends of their country, as well as the oligarchy, shuddered at this measure. 1342
Throughout all the vicissitudes of party, Florence had never yet lost sight of republican institutions. Not that she had never accommodated herself to temporary circumstances by naming a Signior. Charles of Anjou had been invested with that dignity for the term of ten years; Robert king of Naples for five; and his son the duke of Calabria was at his death Signior of Florence. These princes named the podestà, if not the priors; and were certainly pretty absolute in their executive powers, though bound by oath not to alter the statutes of the city (1). But their office had always been temporary. Like the dictatorship of Rome, it was a confessed, unavoidable evil; a suspension, but not extinguishment, of rights. Like that too, it was a dangerous precedent, through which crafty ambition and popular rashness might ultimately subvert the republic. If Walter de Brienne had possessed the subtle prudence of a Matteo Visconti, or a Cane della Scala, there appears no reason to suppose, that Florence would have escaped the fate of other cities; and her history might have become as useless a record of perfidy and assassination as that of Mantua or Verona (2).

But, happily for Florence, the reign of tyranny was very short. The duke of Athens had neither judgment nor activity for so difficult a station. He launched out at once into excesses, which it would be desirable that arbitrary power should always commit at the outset. The taxes were considerably increased; their produce was dissipated. The honour of the state was sacrificed by an inglorious treaty with Pisa; her territory was diminished by some towns throwing off their dependence. Severe and multiplied punishments spread terror through the city. The noble families, who had on the duke's election destroyed the ordinances of justice, now

(1) Villani, l. ix. c. 53. 60. 133. 328. (2) Id. l. xii. c. 1. 2. 3.

found themselves exposed to the more partial caprice of a despot. He filled the magistracies with low creatures from the inferior artificers; a class which he continued to flatter (1). Ten months passed in this manner, when three separate conspiracies, embracing most of the nobility and of the great commoners, were planned for the recovery of freedom. The duke was protected by a strong body of hired cavalry. Revolutions in an Italian city were generally effected by surprise. The streets were so narrow and so easily secured by barricades, that if a people had time to stand on its defence, no cavalry was of any avail. On the other hand, a body of lancers in plate-armour might dissipate any number of a disorderly populace. Accordingly, if a prince or usurper would get possession by surprise, he, as it was called, *rode the city*; that is, galloped with his cavalry along the streets, so as to prevent the people from collecting to erect barricades. This expression is very usual with historians of the fourteenth century (2). The conspirators at Florence were too quick for the duke of Athens. The city was barricaded in every direction; and after a contest of some duration, he consented to abdicate his signiory.

Thus Florence recovered her liberty. Her constitutional laws now seemed to revive of themselves. But the nobility, who had taken a very active part in the recent liberation of their country, thought it hard to be still placed under the rigorous ordinances of justice. Many of the richer commoners acquiesced in an equitable partition of magistracies, which was established through the influence of the bishop. But the populace of Florence, with its characteristic forgetfulness of benefits, was tenacious of those proscriptive ordinances. The nobles too, elated by their success, began again to strike and injure the inferior citizens. A new civil war in the city-streets decided their quarrel; after a desperate resistance, many of the principal houses were pillaged and burned; and the perpetual exclusion of the nobility was confirmed by fresh laws. But the people, now sure of their triumph, relaxed a little upon this occasion the ordinances of justice; and, to make some distinction in favour of merit or innocence, effaced certain families from the list of nobility. Five hundred and thirty persons were thus elevated, as we may call it, to the rank of commoners (3). As it was beyond the competence of the republic of Florence to change a man's ancestors, this nominal alteration left all the real advantages of birth as they were, and was undoubtedly an enhancement of dignity, though, in appearance, a very singular one. Conversely, several unpopular commoners were ennobled, in

(1) Villani, c. 8.

(2) Id. l. x. c. 81. Castruccio. . . . corse la città di Pisa due volte. Sismondi, t. v. p. 105.

(3) Villani, l. xii. c. 18—23. Sismondi says, by a momentary oversight, cinq cent trente *familles*, t. v. p. 377. There were but thirty-seven noble families at Florence, as M. Sismondi himself informs us, t. iv. p. 66.; though Villani reckons the number of individuals at 1,500. Nobles, or *grandi*, as they are more strictly called, were such as had been inscribed, or rather proscribed, as such in the ordinances of justice; at least I do not know what other definition there was.

order to disfranchise them. Nothing was more usual, in subsequent times, than such an arbitrary change of rank, as a penalty or a benefit (1). Those nobles, who were rendered plebeian by favour, were obliged to change their name and arms (2). The constitution now underwent some change. From six the priors were increased to eight; and instead of being chosen from each of the greater arts, they were taken from the four quarters of the city, the lesser artizans, as I conceive, being admissible. The gonfaloniers of companies were reduced to sixteen. And these, along with the signiory, and the twelve buonuomini, formed the college where every proposition was discussed, before it could be offered to the councils for their legislative sanction. But it could only originate, strictly speaking, in the signiory, that is, the gonfalonier of justice, and eight priors, the rest of the college having merely the function of advice and assistance (3).

Several years elapsed before any material disturbance arose at Florence. Her contemporary historian complains indeed, that mean and ignorant persons obtained the office of prior, and ascribes some errors in her external policy to this cause (4). Besides the natural effects of the established rotation, a particular law, called the *divieto*, tended to throw the better families out of public office. By this law, two of the same name could not be drawn for any magistracy: which, as the ancient families were extremely numerous, rendered it difficult for their members to succeed; especially as a ticket once drawn was not replaced in the purse, so that an individual liable to the divieto was excluded until the next biennial revolution (5). This created dissatisfaction among the leading families. They were likewise divided by a new faction, entirely founded, as far as appears, on personal animosity between two prominent houses, the Albizi and the Ricci. The city was, however, tranquil, when, in 1357, a spring was set in motion, which gave quite a different character to the domestic history of Florence.

At the time when the Guelfs, with the assistance of Charles of Anjou, acquired an exclusive domination in the republic, the estates of the Ghibelins were confiscated. One third of these confiscations was allotted to the state; another went to repair the losses of Guelf citizens; but the remainder became the property of a new corporate society, denominated the Guelf party, (parte Guelfa,) with a regular internal organization. The Guelf party had two councils, one of fourteen and one of sixty members; three, or afterwards four, captains, elected by scrutiny every two months;

(1) Messer Antonio di Baldinacrio degli Adimari, tutto che fosse de più grandi e nobili, per grazia era messo tra 'l popolo. Villani, l. xii. c. 103.

(2) Ammirato, p. 748. There were several exceptions to this rule in later times. The Pazzi were made popolani, plebeians, by favour of Cosmo de' Medici. Machiavelli.

(3) Nardi, Storia di Firenze, p. 7. edit. 1584. Villani, loc. cit.

(4) Matteo Villani, in Script. Rer. Italic. t. xiv. p. 93. 244.

(5) Sismondi, t. vi. p. 338.

a treasury, and common seal; a little republic within the republic of Florence. Their primary duty was to watch over the Guelf interest; and for this purpose they had a particular officer for the accusation of suspected Ghibelins (1). We hear not much, however, of the Guelf society for near a century after their establishment. The Ghibelins hardly ventured to shew themselves, after the fall of the White Guelfs in 1304, with whom they had been connected, and confiscation had almost annihilated that unfortunate faction. But, as the oligarchy of Guelf families lost part of its influence through the divieto and system of lottery, some persons of Ghibelin descent crept into public offices; and this was exaggerated by the zealots of an opposite party, as if the fundamental policy of the city was put into danger.

The Guelf society had begun, as early as 1346, to manifest some disquietude at the foreign artizans, who, settling at Florence, and becoming members of some of the trading corporations, pretended to superior offices. They procured accordingly a law, excluding from public trust and magistracy all persons not being natives of the city or its territory. Next year they advanced a step farther; and, with the view to prevent disorder which seemed to threaten the city, a law was passed, declaring every one, whose ancestors at any time since 1300 had been known Ghibelins, or who had not the reputation of sound Guelf principles, incapable of being drawn or elected to offices (2). It is manifest, from the language of the historian who relates these circumstances, and whose testimony is more remarkable from his having died several years before the politics of the Guelf corporation more decidedly shewed themselves, that the real cause of their jealousy was not the increase of Ghibelinism, a merely plausible pretext, but the democratical character which the government had assumed, since the revolution of 1343, which raised the fourteen inferior arts to the level of those which the great merchants of Florence exercised. In the Guelf society, the ancient nobles retained a considerable influence. The laws of exclusion had never been applied to that corporation. Two of the captains were always noble, two were commoners. The people, in debarring the nobility from ordinary privileges, were little aware of the more dangerous channel which had been left open to their ambition. With the nobility some of the great commoners acted in concert, and especially the family and faction of the Albizi. The introduction of obscure persons into office still continued, and some measures more vigorous than the law of 1347 seemed necessary to restore the influence of their aristocracy. They proposed, and, notwithstanding the reluctance of the priors, carried by violence, both in the preliminary deliberations of the signiory, and in the two councils, a law by which every person accepting an office who should be convicted of Ghibelinism or of Ghi-

(1) G. Villani, l. vii. c. 16. (2) Idem, l. xii. c. 72. and 7.

belin descent, upon testimony of public fame, became liable to punishment, capital or pecuniary, at the discretion of the priors. To this law they gave a retrospective effect, and indeed it appears to have been little more than a revival of the provisions made in 1347, which had probably been disregarded. Many citizens who had been magistrates within a few years were cast in heavy fines on this indefinite charge. But the more usual practice was to warn (ammonire) men beforehand against undertaking public trust. If they neglected this hint, they were sure to be treated as convicted Ghibelins. Thus a very numerous class, called Ammoniti, was formed of proscribed and discontented persons, eager to throw off the intolerable yoke of the Guelf society. For the imputation of Ghibelin connexions was generally an unfounded pretext for crushing the enemies of the governing faction (1). Men of approved Guelf principles and origin were every day warned from their natural privileges of sharing in magistracy. This spread an universal alarm through the city; but the great advantage of union and secret confederacy rendered the Guelf society, who had also the law on their side, irresistible by their opponents. Meanwhile the public honour was well supported abroad; Florence had never before been so distinguished as during the prevalence of this oligarchy (2).

The Guelf society had governed with more or less absoluteness for near twenty years, when the republic became involved, through the perfidious conduct of the papal legate, in a war with the Holy See. Though the Florentines were by no means superstitious, this hostility to the church appeared almost an absurdity to determined Guelfs, and shocked those prejudices about names, which make up the politics of vulgar minds. The Guelf society, though it could not openly resist the popular indignation against Gregory XI., was not heartily inclined to this war. Its management fell therefore into the hands of eight commissioners, some of them not well affected to the society; whose administration was so successful and popular as to excite the utmost jealousy in the Guelfs. They began to renew their warnings, and in eight months excluded fourscore citizens (3).

The tyranny of a court may endure for ages; but that of a faction is seldom permanent. In June 1378, the gonfalonier of justice was Salvestro de' Medici, a man of approved patriotism, whose family had been so notoriously of Guelf principles that it was impossible to warn him from office. He proposed to mitigate the severity of the existing law. His proposition did not succeed; but its rejection pro-

(1) Besides the effect of ancient prejudice, Ghibelinism was considered at Florence, in the fourteenth century, as immediately connected with tyrannical usurpation. The Guelf party, says Matteo Villani, is the foundation rock of liberty in Italy; so that if any Guelf becomes a tyrant, he must of necessity turn to the Ghibelin side; and of this there have been many instances. p. 481. So Giovanni Villani says of Passerino, lord of Mantua, that his ancestors had been Guelfs, ma per essere signore e tiranno si fece Ghibellino. l. x. c. 99. And Matteo Villani of the Pepoli at Bologna: Essendo di natura Guelfi, per la tirannia erano quasi alienati della parte. p. 69.

(2) M. Villani, p. 581. 637. 731. Ammirato. Machiavelli. Sismondi.

(3) Ammirato, p. 709.

voked an insurrection, the forerunner of still more alarming tumults. The populace of Florence, like that of other cities, was terrible in the moment of sedition; and a party so long dreaded shrunk before the physical strength of the multitude. Many leaders of the Guelf society had their houses destroyed, and some fled from the city. But instead of annulling their acts, a middle course was adopted by the committee of magistrates who had been empowered to reform the state; the Ammoniti were suspended three years longer from office, and the Guelf society preserved with some limitations. This temporizing course did not satisfy either the Ammoniti, or the populace. The greater arts were generally attached to the Guelf society. Between them and the lesser arts, composed of retail and mechanical traders, there was a strong jealousy. The latter were adverse to the prevailing oligarchy, and to the Guelf society, by whose influence it was maintained. They were eager to make Florence a democracy in fact as well as in name, by participating in the executive government.

But every political institution appears to rest on too confined a basis, to those whose point of view is from beneath it. While the lesser arts were murmuring at the exclusive privileges of the commercial aristocracy, there was yet an inferior class of citizens, who thought their own claims to equal privileges irrefragable. The arrangement of twenty-one trading companies had still left several kinds of artizans unincorporated, and consequently unprivileged. These had been attached to the art with which their craft had most connexion, in a sort of dependent relation. Thus to the company of drapers, the most wealthy of all the various occupations, instrumental in the manufacture, as wool-combers, dyers and weavers, were appendant (1). Besides the sense of political exclusion, these artizans alleged, that they were oppressed by their employers of the art, and that when they complained to the consul, their judge in civil matters, no redress could be procured. A still lower order of the community was the mere populace, who did not practise any regular trade, or who only worked for daily hire. These were called Ciompi, a corruption, it is said, of the French compère.

"Let no one," says Machiavel in this place, "who begins an innovation in a state, expect that he shall stop it at his pleasure, or regulate it according to his intention." After about a month from the first sedition, another broke out, in which the ciompi, or lowest populace, were alone concerned. Through the surprise, or cowardice, or disaffection of the superior citizens, this was suffered to get ahead, and for three days the city was in the hand of a tumultuous rabble. It was vain to withstand their propositions, had they even been more unreasonable than they were. But they only demanded

(1) Before the year 1340, according to Villani's calculation, the woollen trade occupied 30,000 per-
xi. c. 93.

the establishment of two new arts for the trades hitherto dependent, and one for the lower people; and that three of the priors should be chosen from the greater arts, three from the fourteen lesser, and two from those just created. Some delay however occurring to prevent the sanction of these innovations by the councils, a new fury took possession of the populace; the gates of the palace belonging to the signiory were forced open, the priors compelled to fly, and no appearance of a constitutional magistracy remained to throw the veil of law over the excesses of anarchy. The republic seemed to rock from its foundation, and the circumstance to which historians ascribe its salvation is not the least singular in this critical epoch. One Michel di Lando, a wool-carder, half dressed and without shoes, happened to hold the standard of justice wrested from the proper officer when the populace burst into the palace. Whether he was previously conspicuous in the tumult is not recorded; but the wild capricious mob, who had destroyed what they had no conception how to rebuild, suddenly cried out that Lando should be gonfalonier or signior, and reform the city at his pleasure.

A choice, arising probably from wanton folly, could not have been better made by wisdom. Lando was a man of courage, moderation, and integrity. He gave immediate proofs of these qualities by causing his office to be respected. The eight commissioners of the war, who, though not instigators of the sedition, were well pleased to see the Guelf party so entirely prostrated, now fancied themselves masters, and began to nominate priors. But Lando sent a message to them, that he was elected by the people, and that he could dispense with their assistance. He then proceeded to the choice of priors. Three were taken from the greater arts; three from the lesser; and three from the two new arts, and the lower people. This eccentric college lost no time in restoring tranquillity, and compelled the populace by threat of punishment to return to their occupations. But the ciompi were not disposed to give up the pleasures of anarchy so readily. They were dissatisfied at the small share allotted to them in the new distribution of offices, and murmured at their gonfalonier as a traitor to the popular cause. Lando was aware that an insurrection was projected; he took measures with the most respectable citizens; the insurgents, when they shewed themselves, were quelled by force, and the gonfalonier retired from office with an approbation which all historians of Florence have agreed to perpetuate. Part of this has undoubtedly been founded on a consideration of the mischief which it was in his power to inflict. The ciompi, once checked, were soon defeated. The next gonfalonier was, like Lando, a wool-comber; but wanting the intrinsic merit of Lando, his mean station excited universal contempt. None of the arts could endure their low coadjutors; a short struggle was made by the populace, but they were entirely overpowered with considerable slaughter, and the

government was divided between the seven greater and sixteen lesser arts in nearly equal proportions.

The party of the lesser arts, or inferior tradesmen, which had begun this confusion, were left winners when it ceased. Three men of distinguished families, who had instigated the revolution, became the leaders of Florence; Benedetto Alberti, Tomaso Strozzi, and Georgio Scali. Their government had at first to contend with the ciompi, smarting under loss and disappointment. But a populace which is beneath the inferior mechanics may with ordinary prudence be kept in subjection by a government that has a well-organized militia at its command. The Guelf aristocracy was far more to be dreaded. Some of them had been banished, some fined, some ennobled; the usual consequences of revolution which they had too often practised to complain. A more iniquitous proceeding disgraces the new administration. Under pretence of conspiracy, the chief of the house of Albizi, and several of his most eminent associates, were thrown into prison. So little evidence of the charge appeared, that the podestà refused to condemn them; but the people were clamorous for blood, and half with, half without the forms of justice, these noble citizens were led to execution. The part he took in this murder sullies the fame of Benedetto Alberti, who in his general conduct had been more uniformly influenced by honest principles than most of his contemporaries. Those who shared with him the ascendency in the existing government, Strozzi and Scali, abused their power by oppression towards their enemies and insolence towards all. Their popularity was of course soon at an end. Alberti, a sincere lover of freedom, separated himself from men who seemed to emulate the arbitrary government they had overthrown. An outrage of Scali in rescuing a criminal from justice, brought the discontent to a crisis; he was arrested, and lost his head on the scaffold; while Strozzi, his colleague, fled from the city. But this event was instantly followed by a reaction, which Alberti perhaps did not anticipate. Armed men filled the streets; the cry of Live the Guelfs was heard. After a three years depression, the aristocratical party regained its ascendant. They did not revive the severity practised towards the Ammoniti; but the two new arts, created for the small trades, were abolished, and the lesser arts reduced to a third part, instead of something more than one half, of public offices. Several persons who had favoured the plebeians were sent into exile; and among these Michel di Lando, whose great services in subduing anarchy ought to have secured the protection of every government. Benedetto Alberti, the enemy by turns of every faction, because every faction was in its turn oppressive, experienced some years afterwards the same fate. For half a century after this time, no revolution took place at Florence. The Guelf aristocracy, strong in opulence and antiquity, and rendered prudent by experience, under

the guidance of the Albizi family, maintained a preponderating influence without much departing, the times considered, from moderation and respect for the laws (1).

It is sufficiently manifest, from this sketch of the domestic history of Florence, how far that famous republic was from affording a perfect security for civil rights or general tranquillity. They who hate the name of free constitutions may exult in her internal dissensions, as in those of Athens or Rome. But the calm philosopher will not take his standard of comparison from ideal excellence, nor even from that practical good which has been reached in our own unequalled constitution, and in some of the republics of modern Europe. The men and the institutions of the fourteenth century are to be measured by their contemporaries. Who would not rather have been a citizen of Florence than a subject of the Visconti? In a superficial review of history, we are sometimes apt to exaggerate the vices of free states, and to lose sight of those inherent in tyrannical power. The bold censoriousness of republican historians, and the cautious servility of writers under an absolute monarchy, conspire to mislead us as to the relative prosperity of nations. Acts of outrage and tumultuous excesses in a free state are blazoned in minute detail, and descend to posterity; the deeds of tyranny are studiously and perpetually suppressed. Even those historians who have no particular motives for concealment turn away from the monotonous and disgusting crimes of tyrants. "Deeds of cruelty," it is well observed by Matteo Villani, after relating an action of Bernabo Visconti, "are little worthy of remembrance; yet let me be excused for having recounted one out of many, as an example of the peril to which men are exposed under the yoke of an unbounded tyranny (2)." The reign of Bernabo afforded abundant instances of a like kind. Second only to Eccelin among the tyrants of Italy, he rested the security of his dominion upon tortures and death, and his laws themselves enact the protraction of capital punishment through forty days of suffering (3). His nephew Giovanni Maria is said, with a madness like that of Nero or Commodus, to have coursed the streets of Milan by night with blood-hounds, ready to chase and tear any unlucky passenger (4). Nor were other Italian principalities free from similar tyrants, though none perhaps upon the whole so odious as the Visconti. The private history of many families, such for instance as the Scala and the Gonzaga, is but a series of assassinations. The ordinary vices of mankind assumed a tint of portentous guilt in the palaces of Italian

(1) For this part of Florentine history, besides Ammirato, Machiavel, and Sismondi, I have read an interesting narrative of the sedition of the ciompi, by Gino Capponi, in the eighteenth volume of Muratori's collection. It has an air of liveliness and truth which is very pleasing, but it breaks off rather too soon, at the instant of Lande's assuming the office of banneret. Another contemporary writer, Melchiore de' Stefani, who seems to have furnished the materials of the three historians above mentioned, has not fallen in my way.

(2) P. 434.

(3) Sismondi, t. vi. p. 316. Corio, Ist. di Milano, p. 486.

(4) Corio, p. 595.

princes. Their revenge was fratricide, and their lust was incest.

Acquisitions of territory by Florence.

Though fertile and populous, the proper district of Florence was by no means extensive. An independent nobility occupied the Tuscan Apennines with their castles. Of these the most conspicuous were the counts of Guidi, a numerous and powerful family, who possessed a material influence in the affairs of Florence and of all Tuscany till the middle of the fourteenth century, and some of whom preserved their independence much longer (1). To the south, the republics of Arezzo, Perugia, and Siena; to the west, those of Volterra, Pisa, and Lucca; Prato and Pistoja to the north, limited the Florentine territory. It was late before these boundaries were removed. During the usurpations of Uguccione at Pisa, and of Castruccio at Lucca, the republic of Florence was always unsuccessful in the field. After the death of Castruccio, she began to act more vigorously, and engaged in several confederacies with the powers of Lombardy, especially in a league with Venice against Mastino della Scala. But the republic made no acquisition of territory till 1351, when she annexed the small city of Prato, not ten miles from her walls (2). Pistoja, though still nominally independent, received a Florentine garrison about the same time. Several additions were made to the district, by fair purchase from the nobility of the Apennines, and a few by main force. The territory was still very little proportioned to the fame and power of Florence. The latter was founded upon her vast commercial opulence. Every Italian state employed mercenary troops, and the richest was of course the most powerful. In the war against Mastino della Scala in 1336, the revenues of Florence are reckoned by Villani at three hundred thousand florins; which, as he observes, is more than the king of Naples or of Aragon possesses (3). The expenditure went at that time very much beyond the receipt, and was defrayed by loans from the principal mercantile firms, which were secured by public funds; the earliest instance, I believe, of that financial resource (4). Her population was computed at ninety thousand souls. Villani reckons the district at eighty thousand men, I presume those only of military age; but this calculation must have been too large, even though he included, as we may presume, the city in his estimate (5). Tuscany, though

(1) G. Villani, l. v. c. 37. 41. et alibi. The last of the counts Guidi, having unwisely embarked in a confederacy against Florence, was obliged to give up his ancient patrimony in 1440.

(2) M. Villani, p. 72. This was rather a measure of usurpation; but the republic had some reason to apprehend that Prato might fall into the hands of the Visconti. Their conduct towards Pistoja was influenced by the same motive; but it was still further removed from absolute justice. p. 91.

(3) G. Villani, l. xi. c. 90—98. These chapters contain a very full and interesting statement of the revenues, expenses, population, and internal condition of Florence at that time. Part of them is extracted by M. Sismondi, t. v. p. 365. The gold florin was worth about ten shillings of our money. The district of Florence was not then much larger than Middlesex. At present, the revenues of the whole duchy of Tuscany are much less than 150,000*l.* sterling; though the difference in the value of money is very considerable.

(4) G. Villani, l. xi. c. 49.

(5) C. 93. Troviamo diligentemente, che in questi tempi avea in Firenze circa a 25 mila uomini da portare arme da 15 in 70 anni—Istimavasi avere in Firenze da 90 mila bocche tra uomini e femine e fanciulli, per l' avviso del pane bisognava al continuo alla città. These proportions, of 25,000 men between fifteen and seventy, and of 90,000 souls, are as nearly as possible consonant to mo-

well cultivated and flourishing, does not contain by any means so great a number of inhabitants in that space at present.

Pisa.

The first eminent conquest made by Florence was that of Pisa, early in the fifteenth century. Pisa had been distinguished as a commercial city ever since the age of the Othos. From her ports, and those of Genoa, the earliest naval armaments of the western nations were fitted out against the Saracen corsairs, who infested the Mediterranean coasts. In the eleventh century, she undertook, and, after a pretty long struggle, completed, the important, or at least the splendid, conquest of Sardinia, an island long subject to a Moorish chieftain. Several noble families of Pisa, who had defrayed the chief cost of this expedition, shared the island in districts, which they held in fief of the republic (1). At a later period, the Balearic isles were subjected, but not long retained by Pisa. Her naval prowess was supported by her commerce. A writer of the twelfth century reproaches her with the Jews, the Arabians, and other "monsters of the sea," who thronged in her streets (2). The crusades poured fresh wealth into the lap of the maritime Italian cities. In some of those expeditions a great portion of the armament was conveyed by sea to Palestine, and freighted the vessels of Pisa, Genoa, and Venice. When the Christians had bought with their blood the sea-coast of Syria, these republics procured the most extensive privileges in the new states that were formed out of their slender conquest, and became the conduits through which the produce of the East flowed in upon the ruder natives of Europe. Pisa maintained a large share of this commerce, as well as of maritime greatness, till near the end of the thirteenth century. In 1282, we are told by Villani, she was in great power, possessing Sardinia, Corsica, and Elba; from whence the republic, as well as private persons, derived large re-

dern calculation, of which Villani knew nothing, which confirms his accuracy; though M. Sismondi asserts, p. 369., that the city contained 150,000 inhabitants, on no better authority, as far as appears, than that of Boccaccio, who says that 100,000 perished in the great plague of 1348, which was generally supposed to destroy two out of three. But surely two vague suppositions are not to be combined, in order to overthrow such a testimony as that of Villani, who seems to have consulted all registers and other authentic documents in his reach.

What Villani says of the population of the district may lead us to reckon it, perhaps, at about 180,000 souls, allowing the baptisms to be one in thirty of the population. Ragionavasi in questi tempi avere nel contado e distretto di Firenze da 80 mila uomini. Troviamo del piovano, che battezzava i fanciulli, imperocchè per ogni maschio, che battezzava in San Giovanni, pèr avere il novero, metea una fava nera, e per ogni femina una bianca, trovò, ch' erano l' anno in questi tempi dalle 5800 in sei mila, avanzando le più volte il sesso masculino da 300 in 500 per anno. Baptisms could only be performed in one public font, at Florence, Pisa, and some other cities. The building that contained this font was called the Baptistery. The baptisteries of Florence and Pisa still remain, and are well known. Du Cange, v. Baptisterium. But there were fifty-seven parishes, and one hundred and ten churches within the city. Villani, ibid. Mr. Roscoe has published a manuscript, evidently written after the taking of Pisa in 1406, though, as I should guess, not long after that event, containing a proposition for an income tax of ten per cent. throughout the Florentine dominions. Among its other calculations, the population is reckoned at 400,000; assuming that to be the proportion to 80,000 men of military age, though certainly beyond the mark. It is singular that the district of Florence in 1343, is estimated by Villani to contain as great a number, before Pisa, Volterra, or even Prato and Pistoja had been annexed to it. Roscoe's Life of Lorenzo. Appendix, No. 16.

(1) Sismondi, t. 1. p. 345. 372.

(2) Qui pergit Pisas, videt illic monstra marina;
Hæc urbs Paganis, Turchis, Libycis quoque, Parthis,
Sordida; Chaldæi sua lustrant mœnia tetri.
(Donizo, Vita Comitissæ Mathildis, apud Muratori, Dissert. 31.)

venues; and almost ruled the sea by their ships and merchandizes, and beyond sea were very powerful in the city of Acre, and much connected with the principal citizens of Acre (1). The prosperous æra of the Pisans is marked by their public edifices. She was the first Italian city that took a pride in architectural magnificence. Her cathedral is of the eleventh century; the baptistery, the famous inclined tower, or belfry, the arcades that surround the Campo Santo, or cemetery of Pisa, are of the twelfth, or, at latest, of the thirteenth (2).

It would have been no slight anomaly in the annals of Italy, or, we might say, of mankind, if two neighbouring cities, competitors in every mercantile occupation, and every naval enterprize, had not been perpetual enemies to each other. One is more surprised, if the fact be true, that no war broke out between Pisa and Genoa till 1119 (3). From this time at least they continually recurred. An equality of forces and of courage kept the conflict uncertain for the greater part of two centuries. Their battles were numerous, and sometimes, taken separately, decisive; but the public spirit and resources of each city were called out by defeat, and we generally find a new armament replace the losses of an unsuccessful combat. In this respect, the naval contest between Pisa and Genoa, though much longer protracted, resembles that of Rome and Carthage in the first Punic war. But Pisa was reserved for her Ægades. In one fatal battle, off the little isle of Meloria, in 1284, her whole navy was destroyed. Several unfortunate and expensive armaments had almost exhausted the state; and this was the last effort, by private sacrifices, to equip one more fleet. After this defeat it was in vain to contend for empire. Eleven thousand Pisans languished for many years in prison; it was a current saying, that whoever would see Pisa, should seek her at Genoa. A treacherous chief, that Count Ugolino, whose guilt was so terribly avenged, is said to have purposely lost the battle, and prevented the ransom of the captives, to secure his power; accusations that obtain easy credit with an unsuccessful people.

From the epoch of the battle of Meloria, Pisa ceased to be a maritime power. Forty years afterwards she was stripped of her ancient colony, the island of Sardinia. The four Pisan families who had been invested with that conquest had been apt to consider it as their absolute property; their appellation of judge seemed to indicate deputed power; but they sometimes assumed that of king; and several attempts had been made to establish an immediate dependence on the empire, or even on the pope. A new potentate had now come forward on the stage. The malcontent feudatories of Sardinia made overtures to the king of Aragon, who had no scruples about attacking the indisputable possession of a declining

(1) Villani, l. vi. c. 83.
(2) Sismondi, t. iv. p. 178. Tiraboschi, t. iii. p. 406.
(3) Muratori, ad ann. 1119.

republic. Pisa made a few unavailing efforts to defend Sardinia; but the nominal superiority was hardly worth a contest; and she surrendered her rights to the crown of Aragon. Her commerce now dwindled with her greatness. During the fourteenth century Pisa almost renounced the ocean, and directed her main attention to the politics of Tuscany. Ghibelin by invariable predilection, she was in constant opposition to the Guelf cities which looked up to Florence. But in the fourteenth century, the names of freeman and Ghibelin were not easily united; and a city in that interest stood insulated between the republics of an opposite faction, and the tyrants of her own. Pisa fell several times under the yoke of usurpers; she was included in the wide-spreading acquisitions of Gian Galeazzo Visconti; at his death one of his family seized the dominion, and finally the Florentines purchased for 400,000 florins a rival and once equal city. The Pisans made a resistance more according to what they had been, than what they were.

Genoa.—Her wars.

The early history of Genoa, in all her foreign relations, is involved in that of Pisa. As allies against the Saracens of Africa, Spain and the Mediterranean islands, as co-rivals in commerce with these very Saracens, or with the Christians of the East, as co-operators in the great expeditions under the banner of the cross, or as engaged in deadly warfare with each other, the two republics stand in continual parallel. From the beginning of the thirteenth century, Genoa was, I think, the more prominent and flourishing of the two. She had conquered the island of Corsica, at the same time that Pisa reduced Sardinia; and her acquisition, though less considerable, was longer preserved. Her territory at home, the ancient Liguria, was much more extensive, and, what was most important, contained a greater range of sea coast than that of Pisa. But the commercial and maritime prosperity of Genoa may be dated from the recovery of Constantinople by the Greeks in 1261. Jealous of the Venetians, by whose arms the Latin emperors had been placed, and were still maintained on their throne, the Genoese assisted Palæologus in overturning that usurpation. They obtained in consequence the suburb of Pera or Galata, over against Constantinople, as an exclusive settlement, where their colony was ruled by a magistrate sent from home, and frequently defied the Greek capital with its armed gallies and intrepid seamen. From this convenient station Genoa extended her commerce into the Black Sea, and established her principal factory at Caffa, in the Crimean peninsula. This commercial monopoly, for such she endeavoured to render it, aggravated the animosity of Venice. As Pisa retired from the field of waters, a new enemy appeared upon the horizon to dispute the maritime dominion of Genoa. Her first war with Venice was in 1258. The second was not till after the victory of

And Venice.

Meloria had crushed her more ancient enemy. It broke out in 1293, and was prosecuted with determined fury, and a great display of naval strength on both sides. One Genoese armament, as we are assured by an historian, consisted of one hundred and fifty-five gallies, each manned with from two hundred and twenty to three hundred sailors (1); a force astonishing to those who know the slender resources of Italy in modern times, but which is rendered credible by several analogous facts of good authority. It was, however, beyond any other exertion. The usual fleets of Genoa and Venice were of seventy to ninety gallies.

Perhaps the naval exploits of these two republics may afford a more interesting spectacle to some minds than any other part of Italian history. Compared with military transactions of the same age, they are more sanguinary, more brilliant, and exhibit full as much skill and intrepidity. But maritime warfare is scanty in circumstances, and the indefiniteness of its locality prevents it from resting in the memory. And though the wars of Genoa and Venice were not always so unconnected with territorial politics as those of the former city with Pisa, yet, from the alternation of success and equality of forces, they did not often produce any decisive effect. One memorable encounter in the sea of Marmora, where the Genoese fought and conquered single-handed against the Venetians, the Catalans, and the Greeks, hardly belongs to Italian history (2).

1352 War of Chioggia.

But the most remarkable war, and that productive of the greatest consequences, was one that commenced in 1378, after several acts of hostility in the Levant, wherein the Venetians appear to have been the principal aggressors. Genoa did not stand alone in this war. A formidable confederacy was exerted against Venice, who had given provocation to many enemies. Of this Francis Carrara, signor of Padua, and the king of Hungary, were the leaders. But the principal struggle was, as usual, upon the waves. During the winter of 1378, a Genoese fleet kept the sea, and ravaged the shores of Dalmatia. The Venetian armament had been weakened by an epidemic disease, and when Vittor Pisani, their admiral, gave battle to the enemy, he was compelled to fight with a hasty conscription of landsmen against the best sailors in the world. Entirely defeated, and taking refuge at Venice with only seven gallies, Pisani was cast into prison, as if his ill fortune had been his crime. Meanwhile the Genoese fleet, augmented by a strong reinforcement, rode before the long natural ramparts that separate the lagunes of Venice from the Adriatic. Six passages intersect the islands, which constitute this barrier, besides the broader outlets of Brondolo and Fossone, through which the waters of the Brenta and the Adige are discharged. The lagune itself, as is well known, consists of extremely shallow water, unnavigable for any vessel, except along the course

(1) Muratori, A. D. 1295. (2) Gibbon, c. 66.

of artificial and intricate passages. Notwithstanding the apparent difficulties of such an enterprize, Pietro Doria, the Genoese admiral, determined to reduce the city. His first successes gave him reason to hope. He forced the passage, and stormed the little town of Chioggia (1), built upon the inside of the isle bearing that name, about twenty-five miles south of Venice. Nearly four thousand prisoners fell here into his hands; an augury, as it seemed, of a more splendid triumph. In the consternation this misfortune inspired at Venice, the first impulse was to ask for peace. The ambassadors carried with them seven Genoese prisoners, as a sort of peace-offering to the admiral, and were empowered to make large and humiliating concessions, reserving nothing but the liberty of Venice. Francis Carrara strongly urged his allies to treat for peace. But the Genoese were stimulated by long hatred, and intoxicated by this unexpected opportunity of revenge. Doria, calling the ambassadors into council, thus addressed them: "Ye shall obtain no peace from us, I swear to you, nor from the lord of Padua, till first we have put a curb in the mouths of those wild horses that stand upon the place of St. Mark. When they are bridled, you shall have enough of peace. Take back with you your Genoese captives, for I am coming within a few days to release both them and their companions from your prisons." When this answer was reported to the senate, they prepared to defend themselves with the characteristic firmness of their government Every eye was turned towards a great man unjustly punished, their admiral Vittor Pisani. He was called out of prison to defend his country amidst general acclamations; but equal in magnanimity and simple republican patriotism to the noblest characters of antiquity, Pisani repressed the favouring voices of the multitude, and bade them reserve their enthusiasm for St. Mark, the symbol and war-cry of Venice. Under the vigorous command of Pisani, the canals were fortified or occupied by large vessels, armed with artillery; thirty-four gallies were equipped; every citizen contributed according to his power; in the entire want of commercial resources, (for Venice had not a merchantship during this war,) private plate was melted; and the senate held out the promise of ennobling thirty families, who should be most forward in this strife of patriotism.

The new fleet was so ill provided with seamen, that for some months the admiral employed them only in manœuvring along the canals. From some unaccountable supineness, or more probably from the unsuperable difficulties of the undertaking, the Genoese made no assault upon the city. They had indeed fair grounds to hope its reduction by famine or despair. Every access to the continent was cut off by the troops of Padua; and the king of Hungary

(1) Chioggia, known at Venice by the name of Chioza, according to the usage of the Venetian dialect, which changes the *g* into *z*.

had mastered almost all the Venetian towns in Istria and along the Dalmatian coast. The doge Contarini, taking the chief command, appeared at length with his fleet near Chioggia, before the Genoese were aware. They were still less aware of his secret design. He pushed one of the large round vessels then called *cocche* into the narrow passage of Chioggia, which connects the lagune with the sea, and mooring her athwart the channel, interrupted that communication. Attacked with fury by the enemy, this vessel went down on the spot, and the doge improved his advantage, by sinking loads of stones, until the passage became absolutely unnavigable. It was still possible for the Genoese fleet to follow the principal canal of the lagune towards Venice and the northern passages, or to sail out of it by the harbour of Brondolo; but whether from confusion or from miscalculating the dangers of their position, they suffered the Venetians to close the canal upon them by the same means they had used at Chioggia, and even to place their fleet in the entrance of Brondolo, so near to the lagune that the Genoese could not form their ships in line of battle. The circumstances of the two combatants were thus entirely changed. But the Genoese fleet, though besieged in Chioggia, was impregnable, and their command of the land secured them from famine. Venice, notwithstanding her unexpected success, was still very far from secure; it was difficult for the doge to keep his position through the winter; and if the enemy could appear in open sea, the risks of combat were extremely hazardous. It is said, that the senate deliberated upon transporting the seat of their liberty to Candia, and that the doge had announced his intention to raise the siege of Chioggia, if expected succours did not arrive by the first of January 1380. On that very day, Carlo Zeno, an admiral, who, ignorant of the dangers of his country, had been supporting the honour of her flag in the Levant, and on the coasts of Liguria, appeared with a reinforcement of eighteen gallies, and a store of provisions. From that moment the confidence of Venice revived. The fleet, now superior in strength to the enemy, began to attack them with vivacity. After several months of obstinate resistance, the Genoese, whom their republic had ineffectually attempted to relieve by a fresh armament, blocked up in the town of Chioggia, and pressed by hunger, were obliged to surrender. Nineteen gallies only out of forty-eight were in good condition; and the crews were equally diminished in the ten months of their occupation of Chioggia. The pride of Genoa was deemed to be justly humbled; and even her own historian confesses, that God would not suffer so noble a city as Venice to become the spoil of a conqueror (1).

Each of the two republics had sufficient reason to lament their

(1) G. Stella, Annales Genuenses; Gataro, Istoria Padovana. Both these contemporary works, of which the latter gives the best relation, are in the seventeenth volume of Muratori's collection. M. Sismondi's narrative is very clear and spirited. Hist. des Républ. Ital. t. vii. p. 205—232.

mutual prejudices, and the selfish cupidity of their merchants, which usurps in all maritime countries the name of patriotism. Though the capture of Chioggia did not terminate the war, both parties were exhausted, and willing, next year, to accept the mediation of the duke of Savoy. By the peace of Turin, Venice surrendered most of her territorial possessions to the king of Hungary. That prince, and Francis Carrara, were the only gainers. Genoa obtained the isle of Tenedos, one of the original subjects of dispute; a poor indemnity for her losses. Though, upon a hasty view, the result of this war appears more unfavourable to Venice, yet in fact it is the epoch of the decline of Genoa. From this time she never commanded the ocean with such navies as before; her commerce gradually went into decay; and the fifteenth century, the most splendid in the annals of Venice, is, till recent times, the most ignominious in those of Genoa. But this was partly owing to internal dissensions, by which her liberty, as well as glory, was for a while suspended.

Government of Genoa.

At Genoa, as in other cities of Lombardy, the principal magistrates of the republic were originally styled Consuls. A chronicle drawn up under the inspection of the senate perpetuates the names of these early magistrates. It appears that their number varied from four to six, annually elected by the people in their full parliament. These consuls presided over the republic and commanded the forces by land and sea; while another class of magistrates, bearing the same title, were annually elected by the several companies into which the people were divided, for the administration of civil justice (1). This was the regimen of the twelfth century; but in the next, Genoa fell into the fashion of entrusting the executive power to a foreign podestà. The podestà was assisted by a council of eight, chosen by the eight companies of nobility. This institution, if indeed it were any thing more than a custom or usurpation, originated probably not much later than the beginning of the thirteenth century. It gave not only an aristocratic, but almost an oligarchical character to the constitution, since many of the nobility were not members of these eight societies. Of the senate or councils we hardly know more than their existence; they are very little mentioned by historians. Every thing of a general nature, every thing that required the expression of public will, was reserved for the entire and unrepresented sovereignty of people. In no city was the parliament so often convened; for war, for peace, for alliance, for change of government (2). These very dissonant elements were not likely to harmonize. The people, sufficiently accustomed to the forms of democracy to imbibe its spirit, repined at the practical influence which was thrown into the scale of the nobles. Nor did some of the latter class scruple to enter that path of ambition, which leads

(1) Sismondi, t. i. p. 353. (2) Id. t. iii. p. 319.

to power by flattery of the populace. Two or three times within the thirteenth century, an highborn demagogue had nearly overturned the general liberty, like the Torriani at Milan, through the pretence of defending that of individuals (1). Among the nobility themselves, four houses were distinguished beyond all the rest; the Grimaldi, the Fieschi, the Doria, the Spinola; the two former of Guelf politics, the latter adherents of the empire (2). Perhaps their equality of forces, and a jealousy which even the families of the same faction entertained of each other, prevented any one from usurping the signiory at Genoa. Neither the Guelf nor Ghibelin party obtaining a decisive preponderance, continual revolutions occurred in the city. The most celebrated was the expulsion of the Ghibelins under the Doria and Spinola in 1318. They had recourse to the Visconti of Milan, and their own resources were not unequal to cope with their country. The Guelfs thought it necessary to call in Robert king of Naples, always ready to give assistance as the price of dominion, and conferred upon him the temporary sovereignty of Genoa. A siege of several years duration, if we believe an historian of that age, produced as many remarkable exploits as that of Troy. They have not proved so interesting to posterity. The Ghibelins continued for a length of time excluded from the city, but in possession of the seaport of Savona, whence they traded and equipped fleets, as a rival republic, and even entered into a separate war with Venice (3). Experience of the uselessness of hostility, and the loss to which they exposed their common country, produced a reconciliation, or rather a compromise in 1331, when the Ghibelins returned to Genoa. But the people felt that many years of misfortune had been owing to the private enmities of four overbearing families. An opportunity soon offered of reducing their influence within very narrow bounds.

Election of the first Doge.

The Ghibelin faction was at the head of affairs in 1339, a Doria and a Spinola being its leaders, when the discontent of a large fleet in want of pay broke out in open insurrection. Savona and the neighbouring towns took arms avowedly against the aristocratical tyranny; and the capital was itself on the point of joining the insurgents. There was, by the Genoese constitution, a magistrate, named the Abbot of the people, acting as a kind of tribune for their protection against the oppression of the nobility. His functions are not, however, in any book I have seen, very clearly defined. This office had been abolished by the present government, and it was the first demand of the malcontents that it should be restored. This was acceded to, and twenty delegates were appointed to make the choice. While they delayed and the populace was grown weary of waiting, a nameless artizan called

(1) Sismondi, p. 324.
(2) Id. t. iii. p. 328.
(3) Villani, l. ix. passim.

out from an elevated station, that he could direct them to a fit person. When the people, in jest, bade him speak on, he uttered the name of Simon Boccanegra. This was a man of noble birth, and well esteemed, who was then present among the crowd. The word was suddenly taken up; a cry was heard that Boccanegra should be abbot; he was instantly brought forward, and the sword of justice forced into his hand. As soon as silence could be obtained, he modestly thanked them for their favour, but declined an office which his nobility disqualified him from exercising. At this, a single voice out of the crowd exclaimed, *Signior;* and this title was reverberated from every side. Fearful of worse consequences, the actual magistrates urged him to comply with the people, and accept the office of abbot. But Boccanegra, addressing the assembly, declared his readiness to become their abbot, signior, or whatever they would. The cry of signior was now louder than before; while others cried out: "Let him be duke." The latter title was received with greater approbation; and Boccanegra was conducted to the palace, the first duke, or doge of Genoa (1).

Subsequent revolutions.

Caprice alone, or an idea of more pomp and dignity, led the populace, we may conjecture, to prefer this title to that of signior; but it produced important and highly beneficial consequences. In all neighbouring cities, an arbitrary government had been already established under their respective signiors; the name was associated with indefinite power: while that of doge had only been taken by the elective and very limited chief magistrate of another maritime republic. Neither Boccanegra, nor his successors, ever rendered their authority unlimited or hereditary. The constitution of Genoa, from an oppressive aristocracy, became a mixture of the two other forms, with an exclusion of the nobles from power. Those four great families, who had domineered alternately for almost a century, lost their influence at home after the revolution of 1339. Yet, what is remarkable enough, they were still selected in preference for the highest of trusts; their names are still identified with the glory of Genoa; her fleets hardly sailed but under a Doria, a Spinola, or a Grimaldi; such confidence could the republic bestow upon their patriotism, or that of those whom they commanded. Meanwhile two or three new families, a plebeian oligarchy, filled their place in domestic honours; the Adorni, the Fregosi, the Montalti, contended for the ascendant. From their competition ensued revolutions too numerous almost for a separate history; in four years, from 1390 to 1394, the doge was ten times changed; swept away or brought back in the fluctuations of popular tumult. Antoniotto Adorno, four times doge of Genoa, had sought the friendship of Gian Galeazzo Visconti; but that crafty tyrant meditated the subjugation of the republic, and played her factions against one another to render her fall se-

(1) G. Stella. Annal. Genuenses, in Script. Rer. Ital. t. xvii. p. 1072.

cure. Adorno perceived that there was no hope for ultimate independence, but by making a temporary sacrifice of it. His own power, ambitious as he had been, he voluntarily resigned; and placed the republic under the protection or signiory of the king of France. Terms were stipulated, very favourable to her liberties; but with a French garrison once received into the city, they were not always sure of observance (1).

Venice.

While Genoa lost even her political independence, Venice became more conspicuous and powerful than before. That famous republic deduces its original, and even its liberty, from an æra beyond the commencement of the middle ages. The Venetians boast of a perpetual emancipation from the yoke of barbarians. From that ignominious servitude some natives or, as their historians will have it, nobles of Aquileja, and neighbouring towns (2), fled to the small cluster of islands that rise amidst the shoals at the mouth of the Brenta. Here they built the town of Rivoalto, the modern Venice, in 421; but their chief settlement was, till the beginning of the ninth century, at Malamocco. A living writer has, in a passage of remarkable eloquence, described the sovereign republic, immoveable upon the bosom of the waters from which her palaces emerge, contemplating the successive tides of continental invasion, the rise and fall of empires, the change of the dynasties, the whole moving scene of human revolution; till, in her own turn, the last surviving witness of antiquity, the common link between two periods of civilization, has submitted to the destroying hand of time (3). Some part of this renown must, on a cold-blooded scrutiny, be detracted from Venice. Her independence was, at the best, the fruit of her obscurity. Neglected upon their islands, a people of fishermen might without molestation elect their own magistrates; a very equivocal proof of sovereignty in cities much more considerable than Venice. But both the western and the eastern empire alternately pretended to exercise dominion over her; she was conquered by Pepin, son of Charlemagne, and restored by him, as the Chronicles say, to the Greek emperor Nicephorus. There is every appearance that the Venetians had always considered themselves as subject, in a large sense not exclusive of their municipal self-government, to the eastern empire (4). And this connexion was not

Her dependence on the Greek empire.

(1) Sismondi, t. vii. p. 237. 367.

(2) Ebbe principio, says Sanuto haughtily, non da pastori, come ebbe Roma, ma da potenti e nobili.

(3) Sismondi, t. i. p. 309.

(4) Nicephorus stipulates with Charlemagne for his faithful city of Venice, Quæ in devotione imperii illibata steterant. Dandulli Chronicon, in Muratori. Script. Rer. Ital. t. xii. p. 156. In the tenth century, Constantine Porphyrogenitus, in his book De Administratione Imperii, claims the Venetians as his subjects, though he admits that they had, for peace's sake, paid tribute to Pepin and his successors, as kings of Italy. p. 71. I have never seen the famous Squittinio della libertà Veneta, which gave the republic so much offence in the seventeenth century; but a very strong case is made out against their early independence in Giannone's history, t. ii. p. 283. edit. Hala, 1753. Muratori informs us, that so late as 1084, the doge obtained the title of Imperialis Protosevastos from the court of Constantinople; a title which he continued always to use. (Annali d'Italia, ad ann.) But I should lay no stress on this circumstance. The Greek, like the German emperors in modern times, had a mint of spectious titles, which passed for ready money over Christendom.

broken, in the early part, at least, of the tenth century. But, for every essential purpose, Venice might long before be deemed an independent state. Her doge was not confirmed at Constantinople; she paid no tribute, and lent no assistance in war. Her own navies, in the ninth century, encountered the Normans, the Saracens, and the Sclavonians in the Adriatic sea. Upon the coast of Dalmatia were several Greek cities, which the empire had ceased to protect; and which, like Venice itself, became republics for want of a master. Ragusa was one of these, and, more fortunate than the rest, survived as an independent city till our own age. In return for the assistance of Venice, these little seaports put themselves under her government; the Sclavonian pirates were repressed; and after acquiring, partly by consent, partly by arms, a large tract of maritime territory, the doge took the title of duke of Dalmatia, which is said by Dandolo to have been confirmed at Constantinople. Three or four centuries, however, elapsed, before the republic became secure of these conquests, which were frequently wrested from her by rebellions of the inhabitants, or by her powerful neighbour, the king of Hungary.

Conquest of Dalmatia. 997

A more important source of Venetian greatness was commerce. In the darkest and most barbarous period, before Genoa or even Pisa had entered into mercantile pursuits, Venice carried on an extensive traffic both with the Greek and Saracen regions of the Levant. The crusades enriched and aggrandized Venice more, perhaps, than any other city. Her splendour may, however, be dated from the taking of Constantinople by the Latins in 1204. In this famous enterprize, which diverted a great armament destined for the recovery of Jerusalem, the French and Venetian nations were alone engaged; but the former only as private adventurers, the latter with the whole strength of their republic under its doge, Henry Dandolo. Three eighths of the city of Constantinople, and an equal proportion of the provinces, were allotted to them in the partition of the spoil, and the doge took the singular, but accurate title, Duke of three eighths of the Roman empire. Their share was increased by purchases from less opulent crusaders, especially one of much importance, the island of Candia, which they retained till the middle of the seventeenth century. These foreign acquisitions were generally granted out in fief to private Venetian nobles under the supremacy of the republic (1). It was thus that the Ionian islands, to adopt the vocabulary of our days, came under the dominion of Venice, and guaranteed that sovereignty which she now began to affect over the Adriatic. Those of the Archipelago were lost in the sixteenth century. This political greatness was sustained by an increasing commerce. No Christian state preserved so considerable an intercourse with the Mohammedans. While Genoa kept the keys of the Black Sea by

Her acquisitions in the Levant.

(1) Sismondi, t. ii. p. 431.

her colonies of Pera and Caffa, Venice directed her vessels to Acre and Alexandria. These connexions, as is the natural effect of trade, deadened the sense of religious antipathy; and the Venetians were sometimes charged with obstructing all efforts towards a new crusade, or even any partial attacks upon the Mohammedan nations.

Venetian government.

The earliest form of government at Venice, as we collect from an epistle of Cassiodorus in the sixth century, was by twelve annual tribunes. Perhaps the union of the different islanders was merely federative. However, in 697, they resolved to elect a chief magistrate by name of duke, or, in their dialect, doge of Venice. No councils appear to have limited his power, or represented the national will. The doge was general and judge; he was sometimes permitted to associate his son with him, and thus to prepare the road for hereditary power; his government had all the prerogatives, and, as far as in such a state of manners was possible, the pomp of a monarchy. But he acted in important matters with the concurrence of a general assembly; though from the want of positive restraints his executive government might be considered as nearly absolute. Time, however, demonstrated to the Venetians the imperfections of such a constitution. Limitations were accordingly imposed on the doge in 1032; he was prohibited from associating a son in the government, and obliged to act with the consent of two elected counsellors, and, on important occasions, to call in some of the principal citizens. No other change appears to have taken place till 1172, long after every other Italian city had provided for its liberty by constitutional laws, more or less successful, but always manifesting a good deal of contrivance and complication. Venice was, however, dissatisfied with her existing institutions. General assemblies were found, in practice, inconvenient and unsatisfactory. Yet some adequate safeguard against a magistrate of indefinite powers was required by freemen. A representative council, as in other republics, justly appeared the best innovation that could be introduced (1).

The great council of Venice, as established in 1172, was to consist of four hundred and eighty citizens, equally taken from the six districts of the city, and annually renewed. But the election was not made immediately by the people. Two electors, called tribunes, from each of the six districts, appointed the members of the council by separate nomination. These tribunes, at first, were themselves chosen by the people; so that the intervention of this electoral body did not apparently trespass upon the democratical character of the constitution. But the great council, principally composed of men

(1) Sismondi, t. iii. p. 267. As I have never met with the Storia civile Veneta by Vettor Sandi, in nine vols. 4to., or even Laugier's History of Venice, my reliance has chiefly been placed on M. Sismondi, who has made use of Sandi, the latest and probably most accurate historian. To avoid frequent reference, the principal passages in Sismondi relative to the domestic revolutions of Venice, are t. ii. p. 329.; t. iii. p. 267—300.; t. iv. p. 346—370.

of high birth, and invested by the law with the appointment of the doge and of all the councils of magistracy, seem, early in the thirteenth century, to have assumed the right of naming their own constituents. Besides appointing the tribunes, they took upon themselves another privilege; that of confirming or rejecting their successors, before they resigned their functions. These usurpations rendered the annual election almost nugatory; the same members were usually renewed, and though the dignity of counsellor was not yet hereditary, it remained, upon the whole, in the same families. In this transitional state the Venetian government continued during the thirteenth century; the people actually debarred of power, but an hereditary aristocracy not completely or legally confirmed. The right of electing, or rather of re-electing, the great council was transferred, in 1297, from the tribunes, whose office was abolished, to the council of forty; they ballotted upon the names of the members who already sat; and whoever obtained twelve favouring balls out of forty retained his place. The vacancies occasioned by rejection or death were filled up by a supplemental list formed by three electors, nominated in the great council. But they were expressly prohibited, by laws of 1298 and 1300, from inserting the name of any one whose paternal ancestors had not enjoyed the same honour. Thus an exclusive hereditary aristocracy was finally established. And the personal rights of noble descent were rendered complete in 1319, by the abolition of all elective forms. By the constitution of Venice, as it was then settled, every descendant of a member of the great council, on attaining twenty-five years of age, entered as of right into that body, which of course became unlimited in its numbers (1).

But an assembly so numerous as the great council, even before it was thus thrown open to all the nobility, could never have conducted the public affairs with that secrecy and steadiness which were characteristic of Venice, and without an intermediary power between the doge and the patrician multitude, the constitution would have gained nothing in stability to compensate for the loss of popular freedom. The great council had proceeded, very soon after its institution, to limit the ducal prerogatives. That of exercising criminal justice, a trust of vast importance, was transferred in 1179 to a council of forty members annually chosen. The executive government itself was thought too considerable for the doge without some material limitations. Instead of naming his own assistants or pregadi, he was only to preside in a council of sixty members, to

(1) These gradual changes between 1297 and 1319 were first made known by Sandi, from whom M. Sismondi has introduced the facts into his own history. I notice this, because all former writers, both ancient and modern, fix the complete and final establishment of the Venetian aristocracy in 1297.

Twenty-five years complete was the statutable age, at which every Venetian noble had a right to take his seat in the great council. But the names of those who had passed the age of twenty were annually put into an urn, and one fifth drawn out by lot, who were thereupon admitted. On an average, therefore, the age of admission was about twenty-three. Jannotus de Rep. Venet.—Contareni.—Amelot de la Houssaye.

whom the care of the state in all domestic and foreign relations, and the previous deliberation upon proposals submitted to the great council, was confided. This council of pregadi, generally called in later times the senate, was enlarged in the fourteenth century by sixty additional members; and as a great part of the magistrates had also seats in it, the whole number amounted to between two and three hundred. Though the legislative power, properly speaking, remained with the great council, the senate used to impose taxes, and had the exclusive right of making peace and war. It was annually renewed, like almost all other councils at Venice, by the great council. But since even this body was too numerous for the preliminary discussion of business, six counsellors, forming, along with the doge, the signiory, or visible representative of the republic, were empowered to dispatch orders, to correspond with ambassadors, to treat with foreign states, to convoke and preside in the councils, and perform other duties of an administration. In part of these they were obliged to act with the concurrence of what was termed the college, comprising, besides themselves, certain select counsellors, from different constituted authorities (1).

It might be imagined, that a dignity so shorn of its lustre, as that of doge, would not excite an overweening ambition. But the Venetians were still jealous of extinguished power; and while their constitution was yet immature, the great council planned new methods of restricting their chief magistrate. An oath was taken by the doge on his election, so comprehensive as to embrace every possible check upon undue influence. He was bound not to correspond with foreign states, or to open their letters, except in the presence of the signiory; to acquire no property beyond the Venetian dominions, and to resign what he might already possess; to interpose, directly or indirectly, in no judicial process, and not to permit any citizen to use tokens of subjection in saluting him. As a further security, they devised a remarkably complicated mode of supplying the vacancy of his office. Election by open suffrage is always liable to tumult or corruption; nor does the method of secret ballot, while it prevents the one, afford in practice any adequate security against the other. Election by lot incurs the risk of placing incapable persons in situations of arduous trust. The Venetian scheme was intended to combine the two modes without their evils, by leaving the absolute choice of their doge to electors taken by lot. It was presumed that, among a competent number of persons, though taken promiscuously, good sense and right principles would gain such an ascendency, as to prevent any flagrantly improper nomi-

(1) The college of Savj consisted of sixteen persons, and it possessed the *initiative* in all public measures that required the assent of the senate. For no single senator, much less any noble of the great council, could propose any thing for debate. The Signiory had the same privilege. Thus the virtual powers even of the senate were far more limited than they appear at first sight; and no possibility remained of innovation in the fundamental principles of the constitution.

nation, if undue influence could be excluded. For this purpose, the ballot was rendered exceedingly complicated, that no possible ingenuity or stratagem might ascertain the electoral body before the last moment. A single lottery, if fairly conducted, is certainly sufficient for this end. At Venice, as many balls as there were members of the great council present, were placed in an urn. Thirty of these were gilt. The holders of gilt balls were reduced by a second ballot to nine. The nine elected forty, whom lot reduced to twelve. The twelve chose twenty-five by separate nomination (1). The twenty-five were reduced by lot to nine; and each of the nine chose five. These forty-five were reduced to eleven, as before; the eleven elected forty-one, who were the ultimate voters for a doge. This intricacy appears useless, and consequently absurd; but the original principle of a Venetian election (for something of the same kind was applied to all their councils and magistrates) may not always be unworthy of imitation. In one of our best modern statutes, that for regulating the trials of contested elections, we have seen this mixture of chance and selection very happily introduced.

An hereditary prince could never have remained quiet in such trammels as were imposed upon the doge of Venice. But early prejudice accustoms men to consider restraint, even upon themselves, as advantageous; and the limitations of ducal power appeared to every Venetian as fundamental as the great laws of the English constitution do to ourselves. Many doges of Venice, especially in the middle ages, were considerable men; but they were content with the functions assigned to them, which, if they could avoid the tantalizing comparison of sovereign princes, were enough for the ambition of republicans. For life the chief magistrates of their country, her noble citizens for ever, they might thank her in their own name for what she gave, and in that of their posterity for what she withheld. Once only a doge of Venice was tempted to betray the freedom of the republic. Marin Falieri, a man far advanced in life, engaged, from some petty resentment, in a wild intrigue to overturn the government. The conspiracy was soon discovered, and the doge avowed his guilt. An aristocracy so firm and so severe did not hesitate to order his execution in the ducal palace. 1355

For some years after what was called the closing of the great council of the law of 1296, which excluded all but the families actually in possession, a good deal of discontent shewed itself among the commonalty. Several commotions took place about the beginning of the fourteenth century, with the object of restoring a more popular regimen. Upon the suppression of the last, in 1310, the aristocracy sacrificed their own individual freedom along with that of the people, to the preservation of an imaginary privilege. They

(1) Amelot de la Houssaye asserts this: but, according to Contareni, the method was by ballot.

established the famous council of ten, that most remarkable part of the Venetian constitution. This council, it should be observed, consisted in fact of seventeen; comprising the signiory, or the doge and his six counsellors, as well as the ten properly so called. The council of ten had by usage, if not by right, a controuling and dictatorial power over the senate, and other magistrates; rescinding their decisions, and treating separately with foreign princes. Their vast influence strengthened the executive government, of which they formed a part, and gave a vigour to its movements, which the jealousy of the councils would possibly have impeded. But they are chiefly known as an arbitrary and inquisitorial tribunal, the standing tyranny of Venice. Excluding the old council of forty, a regular court of criminal judicature, not only from the investigation of treasonable charges, but of several other crimes of magnitude, they inquired, they judged, they punished, according to what they called reason of state. The public eye never penetrated the mystery of their proceedings; the accused was sometimes not heard, never confronted with witnesses; the condemnation was secret as the inquiry, the punishment undivulged like both (1). The terrible and odious machinery of a police, the insidious spy, the stipendiary informer, unknown to the carelessness of feudal governments, found their natural soil in the republic of Venice. Tumultuous assemblies were scarcely possible in so peculiar a city; and private conspiracies never failed to be detected by the vigilance of the council of ten. Compared with the Tuscan republics, the tranquillity of Venice is truly striking. The names of Guelf and Ghibelin hardly raised any emotion in her streets, though the government was considered, in the first part of the fourteenth century, as rather inclined towards the latter party (2). But the wildest excesses of faction are less dishonouring than the stillness and moral degradation of servitude (3).

It was a very common theme with political writers, till about the beginning of the last century, when Venice fell almost into oblivion, to descant upon the wisdom of this government. And indeed if the preservation of ancient institutions be, as some appear to consider it, not a means, but an end, and an end for which the rights of man and laws of God may at any time be set aside, we must acknowledge

(1) Illum etiam morem observant, ne reum, cum de eo judicium laturi sunt, in collegium admittant, neque cognitorem, aut oratorem quemplam, qui ejus causam agat. Contareni, de Rep. Venet.

(2) Villani several times speaks of the Venetians as regular Ghibelins. l. ix. c. 2.; l. x. c. 89. etc. But this is put much too strongly: though their government may have had a slight bias towards that faction, they were in reality neutral, and far enough removed from any domestic feuds upon that score.

(3) By the modern law of Venice, a nobleman could not engage in trade without derogating from his rank; but I am not aware whether so absurd a restriction existed in the fourteenth and fifteenth centuries. I do not find this peculiarity observed by Janiotti and Contareni, the oldest writers on the Venetian government. It is noticed by Amelot de la Houssaye, who tells us also, that the nobility evaded the law by secret partnership with the privileged merchants, or cittadini, who formed a separate class at Venice. This was the custom in modern times. But I have never understood the principle, or common sense, of such a restriction, especially combined with that other fundamental law, which disqualified a Venetian nobleman from possessing a landed estate on the terra firma of the republic. The latter, however, did not extend, as I have been informed, to Dalmatia, or the Ionian islands.

that it was a wisely constructed system. Formed to compress the two opposite forces, from which resistance might be expected, it kept both the doge and the people in perfect subordination. Even the coalition of an executive magistrate with the multitude, so fatal to most aristocracies, never endangered that of Venice. It is most remarkable, that a part of the constitution, which destroyed every man's security, and incurred general hatred, was still maintained by a sense of its necessity. The council of ten, annually renewed, might annually have been annihilated. The great council had only to withhold their suffrages from the new candidates, and the tyranny expired of itself. This was several times attempted (I speak now of more modern ages); but the nobles, though detesting the council of ten, never steadily persevered in refusing to re-elect it. It was, in fact, become essential to Venice. So great were the vices of her constitution, that she could not endure their remedies. If the council of ten had been abolished at any time since the fifteenth century, if the removal of that jealous despotism had given scope to the corruption of a poor and debased aristocracy, to the licence of a people unworthy of freedom, the republic would have soon lost her territorial possessions, if not her own independence. If indeed it be true, as reported, that during the last hundred years this formidable tribunal had sensibly relaxed its vigilance, if the Venetian government had become less tyrannical through sloth, or decline of national spirit, our conjecture will have acquired the confirmation of experience. Experience has recently shewn, that a worse calamity than domestic tyranny might befall the queen of the Adriatic. In the place of St. Mark, among the monuments of extinguished greatness, a traveller may regret to think that an insolent German soldiery has replaced even the senators of Venice. Her ancient liberty, her bright and romantic career of glory in countries so dear to the imagination, her magnanimous defence in the war of Chioggia, a few thinly scattered names of illustrious men, will rise upon his mind, and mingle with his indignation at the treachery which robbed her of her independence. But if he has learned the true attributes of wisdom in civil policy, he will not easily prostitute that word to a constitution formed without reference to property or to population, that vested sovereign power partly in a body of impoverished nobles, partly in an overruling despotism; or to a practical system of government that made vice the ally of tyranny, and sought impunity for its own assassinations by encouraging dissoluteness of private life. Perhaps too the wisdom so often imputed to the senate in its foreign policy has been greatly exaggerated. The balance of power established in Europe, and above all in Italy, maintained for the two last centuries states of small intrinsic resources, without any efforts of their own. In the ultimate crisis, at least, of Venetian liberty, that solemn mockery of statesmanship was exhibited to contempt; too blind to avert danger, too cowardly to withstand it, the most ancient government of Europe

made not an instant's resistance; the peasants of Underwald died upon their mountains; the nobles of Venice clung only to their lives (1).

Territorial acquisitions of Venice.

Until almost the middle of the fourteenth century, Venice had been content without any territorial possessions in Italy; unless we reckon a very narrow strip of sea coast, bordering on her lagunes, called the Dogato. Neutral in the great contests between the church and the empire, between the free cities and their sovereigns, she was respected by both parties, while neither ventured to claim her as an ally. But the rapid progress of Mastino della Scala, lord of Verona, with some particular injuries, led the senate to form a league with Florence against him. Villani mentions it as a singular honour for his country to have become the confederate of the Venetians, "who, for their great excellence and power, had never allied themselves with any state or prince, except at their ancient conquest of Constantinople and Romania (2)." The result of this combination was to annex the district of Treviso to the Venetian dominions. But they made no further conquests in that age. On the contrary, they lost Treviso in the unfortunate war of Chioggia, and did not regain it till 1389. Nor did they seriously attempt to withstand the progress of Gian Galeazzo Visconti; who, after overthrowing the family of Scala, stretched almost to the Adriatic, and altogether subverted for a time the balance of power in Lombardy.

State of Lombardy at the beginning of the fifteenth century.

But upon the death of this prince in 1404, a remarkable crisis took place in that country. He left two sons, Giovanni Maria, and Filippo Maria, both young, and under the care of a mother, who was little fitted for her situation. Through her misconduct, and the selfish ambition of some military leaders, who had commanded Gian Galeazzo's mercenaries, that extensive dominion was soon broken into fragments. Bergamo, Como, Lodi, Cremona, and other cities, revolted, submitting themselves in general to the families of their former princes, the earlier race of usurpers, who had for nearly a century been crushed by the Visconti. A Guelf faction revived, after the name had long been proscribed in Lombardy. Francesco da Carrara, lord of Padua, availed himself of this revolution to get possession of Verona, and seemed likely to unite all the cities beyond the Adige. No family was so odious to the Venetians as that of Car-

(1) See in the Edinburgh Review, vol. xii. p. 379., an account of a book, which is, perhaps, little known though interesting to the history of our own age: a collection of documents illustrating the fall of the republic of Venice. The article is well written, and, I presume, contains a faithful account of the work; the author of which, Signor Barroni, is respected as a patriotic writer in Italy.

Every one, who has been at Venice, must have been struck with the magnificent tombs of the doges, most of them in the church of S. Giovanni e Paolo, in which the republic seems to identify herself with her chief magistrate, and to make the decorations and inscriptions on his monument a record of her own wealth and glory. In the church of the Scalzi, on a single square stone in the pavement, a very different epitaph from that of Loredano or Foscari may be read, MANINI CINERES. These two words mark the place of interment of Manini, the last doge, whose own pusillanimity, or that of those around him, joined to the calamity of the times, caused him to survive his own dignity and the liberties of Venice. To my feelings this inscription was more striking than the famous *Locus Marini Falieri, pro criminibus decapitati*, upon a vacant canvass among the pictures of the doges in the hall of the Great Council.

(2) L. xi. c. 49.

rara. Though they had seemed indifferent to the more real danger in Gian Galeazzo's lifetime, they took up arms against this inferior enemy. Both Padua and Verona were reduced, and the duke of Milan ceding Vicenza, the republic of Venice came suddenly into the possession of an extensive territory. Francesco da Carrara, who had surrendered in his capital, was put to death in prison at Venice; a cruelty perfectly characteristic of that government, and which would hardly have been avowedly perpetrated, even in the fifteenth century, by any other state in Europe.

Notwithstanding the deranged condition of the Milanese, no further attempts were made by the senate of Venice for twenty years. They had not yet acquired that decided love of war and conquest, which soon began to influence them against all the rules of their ancient policy. There were still left some wary statesmen of the old school, to check ambitious designs. Sanuto has preserved an interesting account of the wealth and commerce of Venice in those days. This is thrown into the mouth of the doge Mocenigo, whom he represents as dissuading his country, with his dying words, from undertaking a war against Milan. "Through peace our city has every year," he said, "ten millions of ducats employed as mercantile capital in different parts of the world; the annual profit of our traders upon this sum amounts to four millions. Our housing is valued at 7,000,000 ducats; its annual rental at 500,000. There thousand merchant ships carry on our trade; forty-three gallies, and three hundred smaller vessels, manned by 19,000 sailors, secure our naval power. Our mint has coined 1,000,000 ducats within the year. From the Milanese dominions alone we draw 1,000,000 ducats in coin, and the value of 900,000 more in cloths; our profit upon this traffic may be reckoned at 600,000 ducats. Proceeding as you have done to acquire this wealth, you will become masters of all the gold in Christendom; but war, and especially unjust war, will lead infallibly to ruin. Already you have spent 900,000 ducats in the acquisition of Verona and Padua; yet the expense of protecting these places absorbs all the revenue which they yield. You have many among you, men of probity and experience; chuse one of these to succeed me; but beware of Francesco Foscari. If he is doge, you will soon have war, and war will bring poverty and loss of honour (1)." Mocenigo died, and Foscari became doge: the prophecies of the former were neglected; and it cannot wholly be affirmed that they were fulfilled. Yet Venice is described, by a writer thirty years later, as somewhat impaired in opulence by her long warfare with the dukes of Milan.

Wars of Milan and Venice.

The latter had recovered a great part of their dominions as rapidly as they had lost them. Giovanni

(1) Sanuto, Vite dei Duchi di Venezia, in Script. Rer. Ital. t. xxii. p. 958. Mocenigo's harangue is very long in Sanuto: I have endeavoured to preserve the substance.

Maria, the elder brother, a monster of guilt even among the Visconti, having been assassinated, Filippo Maria assumed the government of Milan and Pavia, almost his only possessions. But though weak and unwarlike himself, he had the good fortune to employ Carmagnola, one of the greatest generals of that military age. Most of the revolted cities were tired of their new masters, and their inclinations conspiring with Carmagnola's eminent talents and activity, the house of Visconti re-assumed its former ascendency from the Sessia to the Adige. Its fortunes might have been still more prosperous, if Filippo Maria had not rashly as well as ungratefully offended Carmagnola. That great captain retired to Venice, and inflamed a disposition towards war which the Florentines and the duke of Savoy had already excited. The Venetians had previously gained some important advantages in another quarter, by reducing the country of Friuli, with part of Istria, which had for many centuries depended on the temporal authority of a neighbouring prelate, the patriarch of Aquileia. They entered into this new alliance. No undertaking of the republic had been more successful. Carmagnola led on their armies, and in about two years, Venice acquired Brescia and Bergamo, and extended her boundary to the river Adda, which she was destined never to pass.

1426

Change in the military system.

Such conquests could only be made, by a city so peculiarly maritime as Venice, through the help of mercenary troops. But in employing them she merely conformed to a fashion, which states to whom it was less indispensable had long since established. A great revolution had taken place in the system of military service, through most parts of Europe, but especially in Italy. During the twelfth and thirteenth centuries, whether the Italian cities were engaged in their contest with the emperors, or in less arduous and general hostilities among each other, they seem to have poured out almost their whole population, as an armed and loosely organized militia. A single city, with its adjacent district, sometimes brought twenty or thirty thousand men into the field. Every man, according to the trade he practised, or quarter of the city wherein he dwelt, knew his own banner, and the captain he was to obey (1). In battle, the carroccio formed one common rallying point, the pivot of every movement. This was a chariot, or rather waggon, painted with vermilion, and bearing the city standard elevated upon it. That of Milan required four pair of oxen to drag it forward (2). To defend this sacred emblem of his country, which Muratori compares to the ark of the

(1) Muratori, Antiq. Ital. Diss. 26. Denina, Rivoluzioni d' Italia, l. xii. c. 4.

(2) The carroccio was invented by Eribert, a celebrated archbishop of Milan, about 1039. Annali di Murat. Antiq. Ital. Diss. 26. The carroccio of Milan was taken by Frederic II., in 1237, and sent to Rome. Parma and Cremona lost their carroccios to each other, and exchanged them some years afterwards with great exultation. In the fourteenth century this custom had gone into disuse. Id. ibid. Denina, l. xii. c. 4.

covenant among the Jews, was the constant object, that giving a sort of concentration and uniformity to the army, supplied in some degree the want of more regular tactics. This militia was of course principally composed of infantry. At the famous battle of the Arbi, in 1260, the Guelf Florentines had thirty thousand foot, and three thousand horse (1); and the usual proportion was five, six, or ten, to one. Gentlemen, however, were always mounted; and the superiority of a heavy cavalry must have been prodigiously great over an undisciplined and ill-armed populace. In the thirteenth and following centuries, armies seem to have been considered as formidable, nearly in proportion to the number of men at arms, or lancers. A charge of cavalry was irresistible; battles were continually won by inferior numbers, and vast slaughter was made among the fugitives (2).

As the comparative inefficiency of foot soldiers became evident, a greater proportion of cavalry was employed, and armies, though better equipped and disciplined, were less numerous. This we find in the early part of the fourteenth century. The main point for a state at war was to obtain a sufficient force of men at arms. As few Italian cities could muster a large body of cavalry from their own population, the obvious resource was to hire mercenary troops. This had been practised in some instances much earlier. The city of Genoa took the count of Savoy into pay with two hundred horse in 1225 (3). Florence retained five hundred French lances in 1282 (4). But it became much more general in the fourteenth century, chiefly after the expedition of the emperor Henry VII., in 1310. Many German soldiers of fortune, remaining in Italy upon this occasion, engaged in the service of Milan, Florence, or some other state. The subsequent expeditions of Louis of Bavaria in 1326, and of John king of Bohemia, in 1331, brought a fresh accession of adventurers from the same country. Others again came from France, and some from Hungary. All preferred to continue in the richest country and finest climate of Europe, where their services were anxiously solicited, and abundantly repaid. An unfortunate prejudice in favour of strangers prevailed among the Italians of that age. They ceded to them, one knows not why, certainly without having been vanquished, the palm of military skill and valour. The word Transalpine (Oltramontani) is frequently applied to hired cavalry by the two Villani, as an epithet of excellence.

Employment of foreign troops.

(1) Villani, l. vi. c. 79.

(2) Sismondi, t. iii. p. 263. etc., has some judicious observations on this subject.

(3) Muratori, Dissert. 26.

(4) Ammirato, Ist. Florent. p. 159. The same was done in 1297. p. 200. A *lance*, in the technical language of those ages, included the lighter cavalry attached to the man at arms, as well as himself. In France, the full complement of a lance (lance fournie) was five or six horses; thus the 1,500 lances, who composed the original companies of ordonnance raised by Charles VII., amounted to nine thousand cavalry. But in Italy, the number was smaller. We read frequently of barbuti, which are defined, lanze di due cavalli. Corio, p. 437. Lances of three horses were introduced about the middle of the fourteenth century. Id. p. 466.

The experiment of every fresh campaign now told more and more against the ordinary militia. It has been usual for modern writers to lament the degeneracy of martial spirit among the Italians of that age. But the contest was too unequal between an absolutely invulnerable body of cuirassiers, and an infantry of peasants or citizens. The bravest men have little appetite for receiving wounds and death, without the hope of inflicting any in return. The parochial militia of France had proved equally unserviceable; though, as the life of a French peasant was of much less account in the eyes of his government than that of an Italian citizen, they were still led forward like sheep to the slaughter against the disciplined forces of Edward III. The cavalry had about this time laid aside the hauberk, or coat of mail, their ancient distinction from the unprotected populace; which, though incapable of being cut through by the sabre, afforded no defence against the pointed sword introduced in the thirteenth century (1), nor repelled the impulse of a lance, or the crushing blow of a battle-axe. Plate armour was substituted in its place; and the man at arms, cased in entire steel, the several pieces firmly rivetted, and proof against every stroke, his charger protected on the face, chest and shoulders, or, as it was called, barded with plates of steel, fought with a security of success against enemies inferior perhaps only in these adventitious sources of courage to himself (2).

Citizens excused from service.

Nor was the new system of conducting hostilities less inconvenient to the citizens than the tactics of a battle. Instead of rapid and predatory invasions, terminated instantly by a single action, and not extending more than a few days' march from the soldier's home, the more skilful combinations usual in the fourteenth century frequently protracted an indecisive contest for a whole summer (3). As wealth and civilization made evident the advantages of agricultural and mercantile industry, this loss of productive labour could no longer be endured. Azzo Visconti, who died in 1339, dispensed with the personal service of his Milanese subjects. "Another of his laws," says Galvaneo Fiamma, "was, that the people should not go to war, but remain at home for their own business. For they had hitherto been kept with much danger and expense every year, and especially in time of harvest and vintage, when princes are wont to go to war, in besieging cities, and incurred numberless losses, and chiefly on account of the long time that they were so detained (4)." This law of Azzo

(1) Muratori, ad ann. 1226.

(2) The earliest plate armour, engraved in Montfaucon's Monuments de la Monarchie Française, t. ii., is of the reign of Philip the Long, about 1315; but it does not appear generally till that of Philip of Valois, or even later. Before the complete harness of steel was adopted, plated caps were sometimes worn on the knees and elbows, and even greaves on the legs. This is represented in a statue of Charles I., king of Naples, who died in 1285. Possibly the statue may not be quite so ancient. Montfaucon, passim. Daniel, Hist. de la Milice Françoise, p. 395.

(3) This tedious warfare *à la Fabius* is called by Villani guerra guereggiata, l. viii. c. 49. At least I can annex no other meaning to the expression.

(4) Muratori, Antiquit. Ital. Dissert. 26.

Visconti, taken separately, might be ascribed to the usual policy of an absolute government. But we find a similar innovation not long afterwards at Florence. In the war carried on by that republic against Giovanni Visconti in 1351, the younger Villani informs us that "the useless and mischievous personal service of the inhabitants of the district was commuted into a money payment (1)." This change indeed was necessarily accompanied by a vast increase of taxation. The Italian states, republics as well as principalities, levied very heavy contributions. Mastino della Scala had a revenue of 700,000 florins, more, says John Villani, than the king of any European country, except France, possesses (2). Yet this arose from only nine cities of Lombardy. Considered with reference to economy, almost any taxes must be a cheap commutation for personal service. But economy may be regarded too exclusively, and can never counterbalance that degradation of a national character, which proceeds from intrusting the public defence to foreigners.

Companies of adventure.

It could hardly be expected, that stipendiary troops, chiefly composed of Germans, would conduct themselves without insolence and contempt of the effeminacy which courted their services. Indifferent to the cause they supported, the highest pay and the richest plunder were their constant motives. As Italy was generally the theatre of war in some of her numerous states, a soldier of fortune, with his lance and charger for his inheritance, passed from one service to another without regret, and without discredit. But if peace happened to be pretty universal, he might be thrown out of his only occupation, and reduced to a very inferior condition, in a country of which he was not a native. It naturally occurred to men of their feelings, that if money and honour could only be had while they retained their arms, it was their own fault if they ever relinquished them. Upon this principle they first acted in 1343, when the republic of Pisa disbanded a large body of German cavalry which had been employed in a war with Florence (3). A partizan, whom the Italians call the Duke Guarnieri, engaged these dissatisfied mercenaries to remain united under his command. His plan was to levy contributions on all countries which he entered with his company, without aiming at any conquests. No Italian army, he well knew, could be raised to oppose him; and he trusted that other mercenaries would not be ready to fight against men who had devised a scheme so advantageous to the profession. This was the first of the companies of

(1) Matt. Villani, p. 123.

(2) L. xi. c. 45. I cannot imagine why M. Sismondi asserts, t. iv. p. 432., that the lords of cities in Lombardy did not venture to augment the taxes imposed while they had been free. Complaints of heavy taxation are certainly often made against the Visconti, and other tyrants in the fourteenth century.

(3) Sismondi, t. v. p. 380. The dangerous aspect which these German mercenaries might assume, had appeared four years before, when Lodrisio, one of the Visconti, having quarrelled with the lord of Milan, led a large body of troops who had just been disbanded against the city. After some desperate battles, the mercenaries were defeated, and Lodrisio taken, t. v. p. 278. In this instance, however, they acted for another; Guarnieri was the first who taught them to preserve the impartiality of general robbers.

adventure, which continued for many years to be the scourge and disgrace of Italy. Guarnieri, after some time, withdrew his troops, saturated with plunder, into Germany; but he served in the invasion of Naples by Louis, king of Hungary, in 1348, and, forming a new company, ravaged the ecclesiastical state. A still more formidable band of disciplined robbers appeared in 1353, under the command of Fra Moriale, and afterwards of Conrad Lando. This was denominated the Great Company, and consisted of several thousand regular troops, besides a multitude of half-armed ruffians, who assisted as spies, pioneers and plunderers. The rich cities of Tuscany and Romagna paid large sums, that the great company, which was perpetually in motion, might not march through their territory. Florence alone magnanimously resolved not to offer this ignominious tribute. Upon two occasions, once in 1358, and still more conspicuously the next year, she refused either to give a passage to the company, or to redeem herself by money; and in each instance the German robbers were compelled to retire. At this time, they consisted of five thousand cuirassiers, and their whole body was not less than twenty thousand men; a terrible proof of the evils which an erroneous system had entailed upon Italy. Nor were they repulsed on this occasion by the actual exertions of Florence. The courage of that republic was in her councils, not in her arms; the resistance made to Lando's demand was a burst of national feeling, and rather against the advice of the leading Florentines (1); but the army employed was entirely composed of mercenary troops, and probably for the greater part of foreigners.

Sir John Hawkwood.

None of the foreign partizans who entered into the service of Italian states acquired such renown in that career as an Englishman, whom contemporary writers call Aucud or Agustus, but to whom we may restore his national appellation of Sir John Hawkwood. This very eminent man had served in the war of Edward III., and obtained his knighthood from that sovereign, though originally, if we may trust common fame, bred to the trade of a tailor. After the peace of Bretigni, France was ravaged by the disbanded troops, whose devastations Edward was accused, perhaps unjustly, of secretly instigating. A large body of these, under the name of the White Company, passed into the service of the Marquis of Montferrat. They were some time afterwards employed by the Pisans against Florence; and during this latter war, Hawkwood appears as their commander. For thirty years he was continually engaged in the service of the Visconti, of the Pope, or of the Florentines, to whom he devoted himself for the latter part of his life, with more fidelity and steadiness than he had shewn in his first campaigns. The republic testified her gratitude by a public funeral, and by a monument which, I believe, is still extant.

(1) Matt. Villani, p. 537.

Want of military science before his time.

The name of Sir John Hawkwood is worthy to be remembered, as that of the first distinguished commander who had appeared in Europe, since the destruction of the Roman empire. It would be absurd to suppose that any of the constituent elements of military genius which nature furnishes to energetic characters were wanting to the leaders of a barbarian or feudal army; untroubled perspicacity in confusion, firm decision, rapid execution, providence against attack, fertility of resource and stratagem. These are in quality as much required from the chief of an Indian tribe, as from the accomplished commander. But we do not find them in any instance so consummated by habitual skill, as to challenge the name of generalship. No one at least occurs to me, previously to the middle of the fourteenth century, to whom history has unequivocally assigned that character. It is very rarely that we find even the order of battle specially noticed. The monks, indeed, our only chroniclers, were poor judges of martial excellence; yet, as war is the main topic of all annals, we could hardly remain ignorant of any distinguished skill in its operations. This neglect of military science certainly did not proceed from any predilection for the arts of peace. It arose out of the general manners of society, and out of the nature and composition of armies in the middle ages. The insubordinate spirit of feudal tenants, and the emulous equality of chivalry, were alike hostile to that gradation of rank, that punctual observance of irksome duties, that prompt obedience to a supreme command, through which a single soul is infused into the active mass, and the rays of individual merit converge to the head of the general.

In the fourteenth century, we begin to perceive something of a more scientific character in military proceedings, and historians for the first time discover that success does not entirely depend upon intrepidity and physical prowess. The victory of Muhldorf over the Austrian princes in 1322, that decided a civil war in the empire, is ascribed to the ability of the Bavarian commander (1). Many distinguished officers were formed in the school of Edward III. Yet their excellencies were perhaps rather those of active partizans than of experienced generals. Their successes are still due rather to daring enthusiasm, than to wary and calculating combination. Like inexpert chess players, they surprise us by happy sallies against rule, or display their talents in rescuing themselves from the consequence of their own mistakes. Thus the admirable arrangements of the Black Prince at Poitiers hardly redeem the temerity which placed him in a situation where the egregious folly of his adversary alone could have permitted him to triumph. Hawkwood therefore appears to me the first real general of modern times; the earliest master, however imperfect, in the science of

(1) Struvius, Corpus Hist. German. p. 885. Schwepperman, the Bavarian general, is called by a contemporary writer, clarus militari scientiâ vir.

Turenne and Wellington. Every contemporary Italian historian speaks with admiration of his skilful tactics in battle, his stratagems, his well-conducted retreats. Praise of this description, as I have observed, is hardly bestowed, certainly not so continually, on any former captain.

School of Italian generals.

Hawkwood was not only the greatest but the last of the foreign condottieri, or captains of mercenary bands. While he was yet living, a new military school had been formed in Italy, which not only superseded, but eclipsed all the strangers. This important reform was ascribed to Alberic di Barbiano, lord of some petty territories near Bologna. He formed a company altogether of Italians about the year 1379. It is not to be supposed that natives of Italy had before been absolutely excluded from service. We find several Italians, such as the Malatesta family, lords of Rimini, and the Rossi of Parma, commanding the armies of Florence much earlier. But this was the first trading company, if I may borrow the analogy, the first regular body of Italian mercenaries, attached only to their commander, without any consideration of party, like the Germans and English of Lando and Hawkwood. Alberic di Barbiano, though himself no doubt a man of military talents, is principally distinguished by the school of great generals, which the company of St. George under his command produced, and which may be deduced, by regular succession, to the sixteenth century. The first in order of time, and immediate contemporaries of Barbiano, were Jacopo Verme, Facino Cane, and Ottobon Terzo. Among an intelligent and educated people, little inclined to servile imitation, the military art made great progress. The most eminent condottieri being divided, in general, between belligerents, each of them had his genius excited and kept in tension by that of a rival in glory. Every resource of science as well as experience, every improvement in tactical arrangements and the use of arms, were required to obtain an advantage over such equal enemies. In the first year of the fifteenth century, the Italians brought their newly acquired superiority to a test. The emperor Robert, in alliance with Florence, invaded Gian Galeazzo's dominions with a considerable army. From old reputation, which so frequently survives the intrinsic qualities upon which it was founded, an impression appears to have been excited in Italy, that the native troops were still unequal to meet the charge of German cuirassiers. The duke of Milan gave orders to his general, Jacopo Verme, to avoid a combat. But that able leader was aware of a great relative change in the two armies. The Germans had neglected to improve their discipline; their arms were less easily wielded, their horses less obedient to the bit. A single skirmish was enough to open their eyes; they found themselves decidedly inferior; and having engaged in the war with the expectation of easy success, were readily dis-

heartened (1). This victory, or rather this decisive proof that victory might be achieved, set Italy at rest for almost a century from any apprehensions on the side of her ancient masters.

Whatever evils might be derived, and they were not trifling, from the employment of foreign or native mercenaries, it was impossible to discontinue the system without general consent; and too many states found their own advantage in it for such an agreement. The condottieri were indeed all notorious for contempt of engagements. Their rapacity was equal to their bad faith. Besides an enormous pay, for every private cuirassier received much more in value than a subaltern officer at present, they exacted gratifications for every success (2). But every thing was endured by ambitious governments, who wanted their aid. Florence and Venice were the two states which owed most to the companies of adventure. The one loved war without its perils; the other could never have obtained an inch of territory with a population of sailors. But they were both almost inexhaustibly rich by commercial industry; and as the surest paymasters, were best served by those they employed. The Visconti might perhaps have extended their conquest over Lombardy with the militia of Milan; but without a Jacopo del Verme or a Carmagnola, the banner of St. Mark would never have floated at Verona and Bergamo.

Defensive arms of that age.

The Italian armies of the fifteenth century have been remarked for one striking peculiarity. War has never been conducted at so little personal hazard to the soldier. Combats frequently occur in the annals of that age, wherein success, though warmly contested, cost very few lives even to the vanquished (3). This innocence of blood, which some historians turn into ridicule, was no doubt owing in a great degree to the rapacity of the companies of adventure, who, in expectation of enriching themselves by the ransom of prisoners, were anxious to save their lives. Much of the humanity of modern warfare was originally due to this motive. But it was rendered more practicable by the nature

(1) Sismondi, t. vii. p. 439.

(2) Paga doppia, e mese compiuto, of which we frequently read, sometimes granted improvidently, and more often demanded unreasonably. The first speaks for itself; the second was the reckoning a month's service as completed when it was begun, in calculating their pay. Matt. Villani, p. 62. Sismondi, t. v. p. 412.

Gian Galeazzo Visconti promised constant half pay to the condottieri, whom he disbanded in 1396. This perhaps is the first instance of half pay. Sismondi, t. vii. p. 379.

(3) Instances of this are very frequent. Thus at the action of Zagonara, in 1423, but three persons, according to Machiavel, lost their lives, and those by suffocation in the mud. Ist. Fiorent. l. iv. At that of Molinella in 1467, he says that no one was killed, l. vii. Ammirato reproves him for this, as all the authors of the time represent it to have been sanguinary, (t. ii. p. 102.) and insinuates that Machiavel ridicules the inoffensiveness of those armies more than it deserves, schernendo, come egli suol far, quella milizia. Certainly some few battles of the fifteenth century were not only obstinately contested, but attended with considerable loss. Sismondi, t. x. p. 126. 137. But, in general, the slaughter must appear very trifling. Ammirato himself says, that in an action between the Neapolitan and papal troops in 1486, which lasted all day, not only no one was killed, but it is not recorded that any one was wounded. Roscoe's Lorenzo de' Medici, vol. ii. p. 87. Guicciardini's general testimony to the character of these combats is unequivocal. He speaks of the battle of Fornova between the confederates of Lombardy and the army of Charles VIII. returning from Naples in 1495, as very remarkable on account of the slaughter, which amounted on the Italian side to 3,000 men: perchè fu la prima, che da lunghissimo tempo in quà si combattesse con uccisione e con sangue in Italia, perchè innanzi a questa morivano pochissimi uomini in un fatto d' arme. l. ii. p. 178.

of their arms. For once, and for once only in the history of mankind, the art of defence had outstripped that of destruction. In a charge of lancers many fell, unhorsed by the shock, and might be suffocated or bruised to death by the pressure of their own armour; but the lance's point could not penetrate the breast-plate, the sword fell harmless upon the helmet; the conqueror, in the first impulse of passion, could not assail any vital part of a prostrate but not exposed enemy. Still less was to be dreaded from the archers or cross-bowmen who composed a large part of the infantry. The bow indeed, as drawn by an English foot soldier, was the most formidable of arms before the invention of gunpowder. That ancient weapon, though not perhaps common among the Northern nations, nor for several centuries after their settlement, was occasionally in use before the crusades. William employed archers in the battle of Hastings (1). Intercourse with the East, its natural soil, during the twelfth and thirteenth ages, rendered the bow better known. But the Europeans improved on the eastern method of confining its use to cavalry. By employing infantry as archers, they gained increased size, more steady position, and surer aim for the bow. Much, however, depended on the strength and skill of the archer. It was a peculiarly English weapon, and none of the other principal nations adopted it so generally, or so successfully. The cross-bow, which brought the strong and weak to a level, was more in favour upon the continent. This instrument is said by some writers to have been introduced after the first crusade, in the reign of Louis the Fat (2). But, if we may trust William of Poitou, it was employed, as well as the long-bow, at the battle of Hastings. Several of the popes prohibited it as a treacherous weapon; and the restriction was so far regarded that, in the time of Philip Augustus, its use is said to have been unknown in France (3). By degrees it became more general; and cross-bowmen were considered as a very necessary part of a well-organized army. But both the arrow and the quarrel glanced away from plate-armour, such as it became in the fifteenth century, impervious in every point, except when the vizor was raised from the face, or some part of the body accidentally exposed. The horse indeed was less completely protected.

Many disadvantages attended the security against wounds for which this armour had been devised. The enormous weight exhausted the force and crippled the limbs. It rendered the heat of a southern climate insupportable. In some circumstances it increased the danger of death, as in the passage of a river or morass. It was impossible to compel an enemy to fight, because the least entrench-

(1) Pedites in fronte locavit, sagittis armatos et balistis, item pedites in ordine secundo firmiores et loricatos, ultimo turmas equitum. Gul. Pictaviensis, (in Du Chesne,) p. 201. Several archers are represented in the tapestry of Bayeux.

(2) Le Grand, Vie privée des Français, t. i. p. 349.

(3) Du Cange, v. Balista. Muratori, Diss. 26. t. i. p. 462. (Ital.)

ment or natural obstacle could stop such unwieldy assailants. The troops might be kept in constant alarm at night, and either compelled to sleep under arms, or run the risk of being surprised before they could rivet their plates of steel (1). Neither the Italians, however, nor the Transalpines, would surrender a mode of defence which they ought to have deemed inglorious. But in order to obviate some of its military inconveniences, as well as to give a concentration in attack, which lancers impetuously charging in a single line, according to the practice, at least, of France in the middle ages, did not preserve, it became usual for the cavalry to dismount, and leaving their horses at some distance, to combat on foot with the lance. This practice, which must have been singularly embarrassing with the plate-armour of the fifteenth century, was introduced before it became so ponderous. It is mentioned by historians of the twelfth century, both as a German and an English custom (2). We find it in the wars of Edward III. Hawkwood, the disciple of that school, introduced it into Italy (3). And it was practised by the English in their second wars with France, especially at the battles of Crevant and Verneuil (4).

Custom of cavalry dismounting.

Meanwhile a discovery accidentally made, perhaps in some remote age and distant region, and whose importance was but slowly perceived by Europe, had prepared the way not only for a change in her military system, but for political effects still more extensive. If we consider gunpowder as an instrument of human destruction, incalculably more powerful than any that skill had devised or accident presented before, acquiring, as experience shews us, a more sanguinary dominion in every succeeding age, and borrowing all the progressive resources of science and civilization for the extermination of mankind, we shall be appalled at the future prospects of the species, and feel perhaps in no other instance so much difficulty in reconciling the mysterious dispensation with the benevolent order of Providence. As the great security for established governments, the surest preservation against popular tumult, it assumes a more equivocal character, depending upon the solution of a doubtful problem, whether the sum of general happiness has lost more in the last three centuries through arbitrary power, than it has gained through regular police and suppression of disorder.

Invention of gunpowder.

There seems little reason to doubt, that gunpowder was introduced through the means of the Saracens into Europe. Its use in

(1) Sismondi, t. ix. p. 188.

(2) The emperor Conrad's cavalry in the second crusade are said by William of Tyre to have dismounted on one occasion, and fought on foot, de equis descendentes, et facti pedites; *sicut mos est Teutonicis* in summis necessitatibus bellica tractare negotia. l. xvii. c. 4. And the same was done by the English in their engagement with the Scotch near North Allerton, commonly called the battle of the Standard, in 1138. Twysden, Decem Script. p. 342.

(3) Sismondi, t. vi. p. 429. Azarius, in Script. Rer. Ital. t. xvi. Matt. Villani.

(4) Monstrelet, t. ii. fol. 7. 14. 76. Villaret, t. xvii. p. 89. It was a Burgundian as well as English fashion. Entre les Bourguignons, says Comines, lors estoient les plus honorez ceux que descendoient avec les archers. l. i. c. 3.

engines of war, though they may seem to have been rather like our fireworks than artillery, is mentioned by an Arabic writer in the Escurial collection about the year 1249 (1). It was known not long afterwards to our philosopher Roger Bacon, though he concealed in some degree the secret of its composition. In the first part of the fourteenth century, cannon, or rather mortars, were invented, and the applicability of gunpowder to purposes of war was understood. Edward III. employed some pieces of artillery with considerable effect at Crecy (2). But its use was still not very frequent; a circumstance which will surprise us less, when we consider the unscientific construction of artillery; the slowness with which it could be loaded; its stone balls, of uncertain aim and imperfect force, being commonly fired at a considerable elevation; and especially the difficulty of removing it from place to place during an action. In sieges, and in naval engagements, as for example in the war of Chioggia, it was more frequently employed (3). Gradually, however, the new artifice of evil gained ground. The French made the principal improvements. They cast their cannon smaller, placed them on lighter carriages, and used balls of iron (4). They invented portable arms for a single soldier, which, though clumsy in comparison with their present state, gave an augury of a prodigious revolution in the military art. John, duke of Burgundy, in 1411, had 4,000 hand-cannons, as they were called, in his army (5). They are found, under different names, and modifications of form, for which I refer the reader to professed writers on tactics, in most of the wars that historians of the fifteenth century record, but less in Italy than beyond the Alps. The Milanese, in 1449, are said to have armed their militia with 20,000 muskets, which struck terror into the old generals (6). But these muskets, supported on a rest, and charged

(1) Casiri, Bibl. Arab. Hispan. t. ii. p. 7., thus renders the original description of certain missiles used by the Moors. Serpunt, susurrantque scorpiones circumligati ac pulvere nitrato incensi, unde explosi fulgurant ac incendunt. Jam videre erat manganum excussum veluti nubem per aera extendi ac tonitrus instar horrendum edere fragorem, ignemque undequaquè vomens, omnia dirumpere, incendere, in cineres redigere. The Arabic passage is at the bottom of the page; and one would be glad to know whether *pulvis nitratus* is a fair translation. But I think there can on the whole be no doubt that gunpowder is meant. Another Arabian writer seems to describe the use of cannon in the years 1312 and 1323. Id. ibid. And the chronicle of Alphonso XI., king of Castile, distinctly mentions them at the siege of Algeziras in 1342. But before this, they were sufficiently known in France. Gunpowder and cannon are both mentioned in registers of accounts under 1338, (Du Cange, Bombarda,) and in another document of 1345. Hist. du Languedoc, t. iv. p. 204. But the strongest evidence is a passage of Petrarch, written before 1344, and quoted in Muratori, Antich. Ital. Dissert. 26. p. 456., where he speaks of the art, nuper rara, nunc communis.

(2) G. Villani, l. xii. c. 67. Gibbon has thrown out a sort of objection to the certainty of this fact, on account of Froissart's silence. But the positive testimony of Villani, who died within two years afterwards, and had manifestly obtained much information as to the great events passing in France, cannot be rejected. He ascribes a material effect to the cannon of Edward, colpi delle bombarde, which I suspect, from his strong expressions, had not been employed before, except against stone walls. It seemed, he says, as if God thundered con grande uccisione di genti, e sfondamento di cavalli.

(3) Gattaro, Ist. Padovana, in Script. Rer. Ital. t. xvii. p. 360. Several proofs of the employment of artillery in French sieges during the reign of Charles V. occur in Villaret. See the word Artillerie in the index.

Gian Galeazzo had, according to Coria, thirty-four pieces of cannon, small and great, in the Milanese army, about 1397.

(4) Guicciardini, l. i. p. 75., has a remarkable passage on the superiority of the French over the Italian artillery, in consequence of these improvements.

(5) Villaret, t. xiii. p. 476. 510.

(6) Sismondi, t. ix. p. 344. He says that it required a quarter of an hour to charge and fire a

with great delay, did less execution than our sanguinary science would require; and, uncombined with the admirable invention of the bayonet, could not in any degree resist a charge of cavalry. The pike had a greater tendency to subvert the military system of the middle ages, and to demonstrate the efficiency of disciplined infantry. Two free nations had already discomfited, by the help of such infantry, those arrogant knights on whom the fate of battles had depended; the Bohemians, instructed in the art of war by their great master, John Zisca; and the Swiss, who, after winning their independence inch by inch from the house of Austria, had lately established their renown by a splendid victory over Charles of Burgundy. Louis XI. took a body of mercenaries from the United Cantons into pay. Maximilian had recourse to the same assistance (1). And though the importance of infantry was not perhaps decidedly established till the Milanese wars of Louis XII. and Francis I. in the sixteenth century, yet the last years of the middle ages, according to our division, indicated the commencement of that military revolution in the general employment of pikemen and musketeers.

Rivalry of Sforza and Braccio.

Soon after the beginning of the fifteenth century, to return from this digression, two illustrious captains, educated under Alberic di Barbiano, turned upon themselves the eyes of Italy. These were Braccio di Montone, a noble Perugian, and Sforza Attendolo, originally a peasant in the village of Cotignuola. Nearly equal in reputation, unless perhaps Braccio may be reckoned the more consummate general, they were divided by a long rivalry, which descended to the next generation, and involved all the distinguished leaders of Italy. The distractions of Naples, and the anarchy of the ecclesiastical state, gave scope not only to their military, but political ambition. Sforza was invested with extensive fiefs in the kingdom of Naples, and with the office of Great Constable. Braccio aimed at independent acquisitions, and formed a sort of principality around Perugia. This, however, was entirely dissipated at his death. When Sforza and Braccio were no more, their respective parties were headed by the son of the former, Francesco Sforza, and by Nicolas Piccinino, who for more than twenty years fought, with few exceptions, under opposite banners. Piccinino was constantly in the service of Milan. Sforza, whose political talents fully equalled his military skill, never lost sight of the splendid prospects that opened to his ambition. From Eugenius IV. he obtained the March of Ancona, as a fief of the Roman see. Thus rendered more independent than the ordinary condotticri, he mingled as a

Francesco Sforza.

musket. I must confess that I very much doubt the fact of so many muskets having been collected. In 1432, that arm was seen for the first time in Tuscany. Muratori, Dissert. 26. p. 457.

(1) See Guicciardini's character of the Swiss troops, p. 192. The French, he says, had no native infantry; il regno di Francia era debelissimo di fanteria propria, the nobility monopolising all warlike occupations. Ibid.

sovereign prince in the politics of Italy. He was generally in alliance with Venice and Florence, throwing his weight into their scale to preserve the balance of power against Milan and Naples. But his ultimate designs rested upon Milan. Filippo Maria, duke of that city, the last of his family, had only a natural daughter, whose hand he sometimes offered, and sometimes withheld from Sforza. Even after he had consented to their union, his suspicious temper was incapable of admitting such a son-in-law into confidence, and he joined in a confederacy with the pope and king of Naples, to strip Sforza of the March. At the death of Filippo Maria in 1447, that general had nothing left but his glory, and a very disputable claim to the Milanese succession. This, however, was set aside by the citizens, who revived their republican government. A republic in that part of Lombardy might, with the help of Venice and Florence, have withstood any domestic or foreign usurpation. But Venice was hostile, and Florence indifferent. Sforza became the general of this new state, aware that such would be the probable means of becoming its master. No politician of that age scrupled any breach of faith for his interest. Nothing, says Machiavel, was thought shameful, but to fail. Sforza with his army deserted to the Venetians; and the republic of Milan, being both incapable of defending itself, and distracted by civil dissensions, soon fell a prey to his ambition. In 1450, he was proclaimed duke, rather by right of election, or of conquest, than in virtue of his marriage with Bianca, whose sex, as well as illegitimacy, seemed to preclude her from inheriting.

He acquires the duchy of Milan.

Affairs of Naples.

I have not alluded for some time to the domestic history of a kingdom, which bore a considerable part during the fourteenth and fifteenth centuries in the general combinations of Italian policy, not wishing to interrupt the reader's attention by too frequent transitions. We must return again to a more remote age in order to take up the history of Naples. Charles of Anjou, after the deaths of Manfred and Conradin had left him without a competitor, might be ranked in the first class of European sovereigns. Master of Provence and Naples, and at the head of the Guelf faction in Italy, he had already prepared a formidable attack on the Greek empire when a memorable revolution in Sicily brought humiliation on his latter years. John of Procida, a Neapolitan, whose patrimony had been confiscated for his adherence to the party of Manfred, retained, during long years of exile, an implacable resentment against the house of Anjou. From the dominions of Peter III., king of Aragon, who had bestowed estates upon him in Valencia, he kept his eye continually fixed on Naples and Sicily. The former held out no favourable prospects; the Ghibelin party had been entirely subdued, and the principal barons were of French extraction or inclinations. But the island was in a very different

1272

Rebellion of Sicily from Charles of Anjou.

state. Unused to any strong government, it was now treated as a conquered country. A large body of French soldiers garrisoned the fortified towns, and the systematic oppression was aggravated by those insults upon women, which have always been characteristic of that people, and are most intolerable to an Italian temperament. John of Procida travelling in disguise through the island animated the barons with a hope of deliverance. In like disguise, he repaired to the pope, Nicolas III., who was jealous of the new Neapolitan dynasty, and obtained his sanction to the projected insurrection; to the court of Constantinople, from which he readily obtained money; and to the king of Aragon, who employed that money in fitting out an armament, that hovered upon the coast of Africa, under pretext of attacking the Moors. It is, however, difficult at this time to distinguish the effects of preconcerted conspiracy from those of casual resentment. Before the intrigues so skilfully conducted had taken effect, yet after they were ripe for developement, an outrage committed upon a lady at Palermo during a procession on the vigil of Easter, provoked the people to that terrible massacre of all the French in their island, which has obtained the name of Sicilian Vespers. Unpremeditated as such an ebullition of popular fury must appear, it fell in, by the happiest coincidence, with the previous conspiracy. The king of Aragon's fleet was at hand; the Sicilians soon called in his assistance; he sailed to Palermo, and accepted the crown. John of Procida is a remarkable witness to a truth which the pride of governments will seldom permit them to acknowledge; that an individual, obscure and apparently insignificant, may sometimes, by perseverance and energy, shake the foundations of established states; while the perfect concealment of his intrigues proves also, against a popular maxim, that a political secret may be preserved by a number of persons during a considerable length of time (1).

Sicilian Vespers. 1283

The long war that ensued upon this revolution involved or interested the greater part of civilized Europe. Philip III. of France adhered to his uncle, and the king of Aragon was compelled to fight for Sicily within his native dominions. This indeed was the more vulnerable point of attack. Upon the sea he was lord of the ascendant. His Catalans, the most intrepid of Mediterranean sailors, were led to victory by a Calabrian refugee, Roger di Loria, the most illustrious and suc-

War in consequence between France and Aragon.

(1) Giannone, though he has well described the schemes of John of Procida, yet, as is too often his custom, or rather that of Costanzo, whom he implicitly follows, drops or slides over leading facts; and thus, omitting entirely, or misrepresenting the circumstances of the Sicilian Vespers, treats the whole insurrection as the result of a deliberate conspiracy. On the other hand, Nicolas Specialis, a contemporary writer, in the seventh volume of Muratori's collection, represents the Sicilian Vespers as proceeding entirely from the casual outrage in the streets of Palermo. The thought of calling in Peter, he asserts, did not occur to the Sicilians till Charles had actually commenced the siege of Messina. But this is equally removed from the truth. Gibbon has made more errors than are usual with so accurate an historian in his account of this revolution, such as calling Constance, the queen of Peter, *sister* instead of *daughter* of Manfred. A good narrative of the Sicilian Vespers may be found in Velly's History of France, t. vi.

cessful admiral whom Europe produced till the age of Blake and de Ruyter. In one of Loria's battles, the eldest son of the king of Naples was made prisoner; and the first years of his own reign were spent in confinement. But notwithstanding these advantages, it was found impracticable for Aragon to contend against the arms of France, and latterly of Castile, sustained by the rolling thunders of the Vatican. Peter III. had bequeathed Sicily to his second son James; Alfonso, the eldest, king of Aragon, could not fairly be expected to ruin his inheritance for his brother's cause; nor were the barons of that free country disposed to carry on a war without national objects. He made peace accordingly in 1295, and engaged to withdraw all his subjects from the Sicilian service. Upon his own death, which followed very soon, James succeeded to the kingdom of Aragon, and ratified the renunciation of Sicily. But the natives of that island had received too deeply the spirit of independence to be thus assigned over by the letter of a treaty. After solemnly abjuring, by their ambassadors, their allegiance to the king of Aragon, they placed the crown upon the head of his brother Frederic. They maintained the war against Charles II. of Naples, against James of Aragon, their former king, who had bound himself to enforce their submission, and even against the great Roger di Loria, who, upon some discontent with Frederic, deserted their banner, and entered into the Neapolitan service. Peace was at length made in 1300, upon condition that Frederic should retain during his life the kingdom, which was afterwards to revert to the crown of Naples; a condition not likely to be fulfilled.

Upon the death of Charles II., king of Naples, in 1305, a question arose as to the succession. His eldest son, Charles Martel, had been called by maternal inheritance to the throne of Hungary, and had left at his decease a son Carobert, the reigning sovereign of that country. According to the laws of representative succession, which were at this time tolerably settled in private inheritance, the crown of Naples ought to have regularly devolved upon that prince.

Robert, king of Naples.

But it was contested by his uncle Robert, the eldest living son of Charles II., and the cause was pleaded by civilians before Pope Clement V. at Avignon, the feudal superior of the Neapolitan kingdom. Reasons of public utility, rather than of legal analogy, seem to have prevailed in the decision which was made in favour of Robert (1). The course of his reign evinced the wisdom of this determination. Robert, a wise and active, though not personally a martial prince, maintained the ascendency of the Guelf faction, and the papal influence connected with it, against the formidable combination of Ghibelin usurpers in Lombardy, and the two emperors Henri VII. and Louis of Bavaria. No male issue survived Robert, whose crown descended to his grand-daughter

(1) Giannone, l. xxii. Summonte, t. ii. p. 370. Some of the civilians of that age, however, approved the decision.

Joanna. She had been espoused, while a child, to her cousin Andrew, son of Carobert, king of Hungary, who was educated with her in the court of Naples. Auspiciously contrived as this union might seem to silence a subsisting claim upon the kingdom, it proved eventually the source of civil war and calamity for a hundred and fifty years. Andrew's manners were barbarous, more worthy of his native country than of that polished court wherein he had been bred. He gave himself up to the society of Hungarians, who taught him to believe that a matrimonial crown and derivative royalty were derogatory to a prince who claimed by a paramount hereditary right. In fact, he was pressing the court of Avignon to permit his own coronation, which would have placed in a very hazardous condition the rights of the queen, with whom he was living on ill terms, when one night, he was seized, strangled, and thrown out of a window. Public rumour, in the absence of notorious proof, imputed the guilt of this mysterious assassination to Joanna. Whether historians are authorized to assume her participation in it so confidently as they have generally done, may perhaps be doubted; though I cannot venture positively to rescind their sentence. The circumstances of Andrew's death were undoubtedly pregnant with strong suspicion (1). Louis, king of Hungary, his brother, a just and stern prince, invaded Naples, partly as an avenger, partly as a conqueror. The queen, and her second husband, Louis of Tarento, fled to Provence, where her acquittal, after a solemn, if not an impartial, investigation, was pronounced by Clement VI. Louis meanwhile found it more difficult to retain than to acquire the kingdom of Naples; his own dominion required his presence; and Joanna soon recovered her crown. She reigned for thirty years more without the attack of any enemy, but not intermeddling, like her progenitors, in the general concerns of Italy. Childless by four husbands, the succession of Joanna began to excite ambitious speculations. Of all the male descendants of Charles I. none remained but the king of Hungary, and Charles, duke of Durazzo, who had married the queen's niece, and was regarded by her as the presump-

1343

Joanna. Murder of her husband Andrew.

(1) The Chronicle of Dominic di Gravina (Script. Rer. Ital. t. xii.) seems to be our best testimony for the circumstances connected with Andrew's death; and after reading his narrative more than once, I find myself undecided as to this perplexed and mysterious story. Gravina's opinion, it should be observed, is extremely hostile to the queen. Nevertheless, there are not wanting presumptions, that Charles, first duke of Durazzo, who had married his sister, was concerned in the murder of Andrew, for which in fact he was afterwards put to death by the king of Hungary. But, if the duke of Durazzo was guilty, it is unlikely that Joanna should be so too; because she was on very bad terms with him, and indeed the chief proofs against her are founded on the investigation which Durazzo himself professed to institute. Confessions obtained through torture are as little credible in history as they ought to be in judicature; even if we could be positively sure, which is not the case in this instance, that such confessions were ever made. However, I do not pretend to acquit Joanna, but merely to notice the uncertainty that rests over her story, on account of the positiveness with which all historians, except those of Naples, and the Abbé de Sade, whose vindication (Vie de Pétrarque, t. ii. notes) does her more harm than good, have assumed the murder of Andrew to have been her own act, as if she had ordered his execution in open day.

Those who believe in the innocence of Mary queen of Scots may, besides the obvious resemblance in their stories, which has been often noticed, find a more particular parallel between this duke of Durazzo and the earl of Murray.

tive heir to the crown. But, offended by her marriage with Otho of Brunswick, he procured the assistance of a Hungarian army to invade the kingdom, and, getting the queen into his power, took possession of the throne. In this enterprize he was seconded by Urban VI., against whom Joanna had unfortunately declared in the great schism of the church. She was smothered with a pillow, in prison, by the order of Charles. The name of Joan of Naples has suffered by the lax repetition of calumnies. Whatever share she may have had in her husband's death, and certainly under circumstances of extenuation, her subsequent life was not open to any flagrant reproach. The charge of dissolute manners, so frequently made, is not warranted by any specific proof or contemporary testimony.

1378

House of Anjou.

In the extremity of Joanna's distress, she had sought assistance from a quarter too remote to afford it in time for her relief. She adopted Louis, duke of Anjou, eldest uncle of the young king of France, Charles VI., as her heir in the kingdom of Naples and county of Provence. This bequest took effect without difficulty in the latter country. Naples was entirely in the possession of Charles of Durazzo. Louis, however, entered Italy with a very large army, consisting at least of 30,000 cavalry, and, according to some writers, more than double that number (1). He was joined by many Neapolitan barons attached to the late queen. But by a fate not unusual in so imperfect a state of military science, this armament produced no adequate effect, and mouldered away through disease and want of provisions. Louis himself dying not long afterwards, the government of Charles III. appeared secure, and he was tempted to accept an offer of the crown of Hungary. This enterprize, equally unjust and injudicious, terminated in his assassination. Ladislaus, his son, a child ten years old, succeeded to the throne of Naples, under the guardianship of his mother Margaret; whose exactions of money producing discontent, the party which had supported the late duke of Anjou became powerful enough to call in his son. Louis II., as he was called, reigned at Naples, and possessed most part of the kingdom for several years; the young king Ladislaus, who retained some of the northern provinces, fixing his residence at Gaeta. If Louis had prosecuted the war with activity, it seems probable that he would have subdued his adversary. But his character was not very energetic; and Ladislaus, as he advanced to manhood, displaying much superior qualities, gained ground by degrees, till the Angevin barons, perceiving the turn of the tide, came over to his banner, and he recovered his whole dominions.

Ladislaus.

The kingdom of Naples, at the close of the fourteenth century, was still altogether a feudal government. This had been introduced by the first Norman kings, and the system had

(1) Muratori. Summonte. Costanzo.

rather been strengthened than impaired under the Angevin line. The princes of the blood, who were at one time numerous, obtained extensive domains by way of apanage. The principality of Tarento was a large portion of the kingdom (1). The rest was occupied by some great families, whose strength, as well as pride, was shewn in the number of men at arms whom they could muster under their banner. At the coronation of Louis II. in 1390, the Sanseverini appeared with 1,800 cavalry completely equipped (2). This illustrious house, which had filled all the high offices of state, and changed kings at its pleasure, was crushed by Ladislaus, whose bold and unrelenting spirit well fitted him to bruise the heads of the aristocratic hydra. After thoroughly establishing his government at home, this ambitious monarch directed his powerful resources towards foreign conquests. The ecclesiastical territories had never been secure from rebellion or usurpation; but legitimate sovereigns had hitherto respected the patrimony of the head of the church. It was reserved for Ladislaus, a feudal vassal of the Holy See, to seize upon Rome itself as his spoil. For several years, while the disordered state of the church, in consequence of the schism and the means taken to extinguish it, gave him an opportunity, the king of Naples occupied great part of the papal territories. He was disposed to have carried his arms farther north, and attacked the republic of Florence, if not the states of Lombardy, when his death relieved Italy from the danger of this new tyranny.

Joanna II.

An elder sister, Joanna II., reigned at Naples after Ladislaus. Under this queen, destitute of courage and understanding, and the slave of appetites which her age rendered doubly disgraceful, the kingdom relapsed into that state of anarchy from which its late sovereign had rescued it. I shall only refer the reader to more enlarged histories, for the first years of Joanna's reign. In 1421, the two most powerful individuals were Sforza Attendolo, great constable, and Sir Gianni Caraccioli, the queen's minion, who governed the palace with unlimited sway. Sforza, aware that the favourite was contriving his ruin, and remembering the prison in which he had lain more than once since the accession of Joanna, determined to anticipate his enemies, by calling a pretender to the crown, another Louis of Anjou, third in descent of that unsuccessful dynasty. The Angevin party, though proscribed and oppressed, was not extinct; and the populace of Naples, in particular, had always been on that side. Caraccioli's influence and the queen's dishonourable weakness rendered the nobility disaffected. Louis III. therefore had no remote prospect of success. But Caraccioli was more prudent than favourites, se-

(1) It comprehended the provinces now called Terra d'Otranto, and Terra di Bari; besides part of those adjoining. Summonte, Istoria di Napoli, t. iii. p. 537. Orsini, prince of Tarento, who died in 1463, had 4,000 troops in arms, and the value of 1,000,000 florins in moveables. Sismondi, t. x. p. 151.

(2) Summonte, t. iii. p. 517. Giannone, l. xxiv. c. 4

lected from such motives, have usually proved. Joanna was old and childless; the reversion to her dominions was a valuable object to any prince in Europe. None was so competent to assist her, or so likely to be influenced by the hope of succession, as Alfonso, king of Aragon and Sicily. That island, after the reign of its deliverer Frederic I., had unfortunately devolved upon weak or infant princes. One great family, the Chiaramonti, had possessed itself of half Sicily; not by a feudal title, as in other kingdoms, but as a kind of counter-sovereignty, in opposition to the crown, though affecting rather to bear arms against the advisers of their kings, than against themselves. The marriage of Maria, queen of Sicily, with Martin, son of the king of Aragon, put an end to the national independence of her country. Dying without issue, she left the crown to her husband. This was consonant perhaps to the received law of some European kingdoms. But, upon the death of Martin in 1409, his father, also named Martin, king of Aragon, took possession as heir to his son without any election by the Sicilian parliament. The Chiaramonti had been destroyed by the younger Martin, and no party remained to make opposition. Thus was Sicily united to the crown of Aragon. Alfonso, who now enjoyed those two crowns, gladly embraced the proposals of the queen of Naples. They were founded indeed on the most substantial basis, mutual interest. She adopted Alfonso as her son and successor, while he bound himself to employ his forces in delivering a kingdom that was to become his own. Louis of Anjou, though acknowledged in several provinces, was chiefly to depend upon the army of Sforza; and an army of Italian mercenaries could only be kept by means which he was not able to apply. The king of Aragon therefore had far the better prospects in the war, when one of the many revolutions of this reign defeated his immediate expectations. Whether it was that Alfonso's noble and affable nature afforded a contrast which Joanna was afraid of exhibiting to the people, or that he had really formed a plan to anticipate his succession to the throne, she became more and more distrustful of her adopted son; till, an open rupture having taken place, she entered into a treaty with her hereditary competitor, Louis of Anjou, and, revoking the adoption of Alfonso, substituted the French prince in his room. The king of Aragon was disappointed by this unforeseen stroke, which, uniting the Angevin faction with that of the reigning family, made it impracticable for him to maintain his ground for any length of time in the kingdom. Joanna reigned for more than ten years without experiencing any inquietude from the pacific spirit of Louis, who, content with his reversionary hopes, lived as a sort of exile in Calabria (1). Upon his

Adoption of Alfonso of Aragon.

Affairs of Sicily.

Its revocation in favour of Louis of Anjou.

(1) Joanna's great favourite, Caraccioli, fell a victim some time before his mistress's death to an intrigue of the palace: the duchess of Sessia, a new favourite, having prevailed on the feeble old

death, the queen, who did not long survive him, settled the kingdom on his brother Regnier. The Neapolitans were generally disposed to execute this bequest. But Regnier was unluckily at that time a prisoner to the duke of Burgundy; and though his wife maintained the cause with great spirit, it was difficult for her, or even for himself, to contend against the king of Aragon, who immediately laid claim to the kingdom. After a contest of several years, Regnier, having experienced the treacherous and selfish abandonment of his friends, yielded the game to his adversary; and Alfonso founded the Aragonese line of sovereigns at Naples, deriving pretensions more splendid than just from Manfred, from the house of Swabia, and from Roger Guiscard (1).

Alfonso king of Naples.

In the first year of Alfonso's Neapolitan war, he was defeated and taken prisoner by a fleet of the Genoese, who, as constant enemies of the Catalans in all the naval warfare of the Mediterranean, had willingly lent their aid to the Angevin party. Genoa was at this time subject to Filippo Maria, duke of Milan; and her royal captive was transmitted to his court. But here the brilliant graces of Alfonso's character won over his conqueror, who had no reason to consider the war as his own concern. The king persuaded him, on the contrary, that a strict alliance with an Aragonese dynasty in Naples, against the pretensions of any French claimant, would be the true policy and best security of Milan. That city, which he had entered as a prisoner, he left as a friend and ally. From this time Filippo Maria Visconti and Alfonso were firmly united in their Italian politics, and formed one weight of the balance, which the republics of Venice and Florence kept in equipoise. After the succession of Sforza to the duchy of Milan, the same alliance was generally preserved. Sforza had still more powerful reasons than his predecessor for excluding the French from Italy, his own title being contested by the duke of Orleans, who derived a claim from his mother Valentine, a daughter of Gian Galeazzo Visconti. But the two republics were no longer disposed towards war. Florence had spent a great deal without any advantage in her contest with Filippo Maria (2); and the new duke of Milan had been

His connexion with Milan.

queen to permit him to be assassinated. About this time Alfonso had every reason to hope for the renewal of the settlement in his favour. Caraccioli had himself opened a negotiation with the king of Aragon; and, after his death, the duchess of Sessia embarked in the same cause. Joan even revoked secretly the adoption of the duke of Anjou. This circumstance might appear doubtful; but the historian, to whom I refer, has published the act of revocation itself, which bears date April 11th, 1433. Zurita (Anales de Aragon, t. iv. p. 217.) admits that no other writer, either contemporary or subsequent, has mentioned any part of the transaction, which must have been kept very secret; but his authority is so respectable, that I thought it worth notice, however uninteresting these remote intrigues may appear to most readers. Joanna soon changed her mind again, and took no overt steps in favour of Alfonso.

(1) According to a treaty between Frederic III., king of Sicily, and Joanna I., of Naples, in 1363, the former monarch was to assume the title of king of Trinacria, leaving the original style to the Neapolitan line. But, neither he, nor his successors in the island, ever complied with this condition, or entitled themselves otherwise than kings of Sicily ultra Pharum, in contradistinction to the other kingdom, which they denominated, Sicily citra Pharum. Alfonso of Aragon, when he united both these, was the first who took the title, King of the two Sicilies, which his successors have retained ever since. Giannone, t. iii. p. 224.

(2) The war ending with the peace of Ferrara, in

the constant personal friend of Cosmo de' Medici, who altogether influenced that republic. At Venice indeed he had been regarded with very different sentiments; the senate had prolonged their war against Milan with redoubled animosity after his elevation, deeming him a no less ambitious and more formidable neighbour than the Visconti. But they were deceived in the character of Sforza. Conscious that he had reached an eminence beyond his early hopes, he had no care but to secure for his family the possession of Milan, without disturbing the balance of Lombardy. No one better knew than Sforza the faithless temper and destructive politics of the condottieri, whose interest was placed in the oscillations of interminable war, and whose defection might shake the stability of any government. Without peace it was impossible to break that ruinous system, and accustom states to rely upon their natural resources. Venice had little reason to expect further conquests in Lombardy: and if her ambition had inspired the hope of them, she was summoned by a stronger call, that of self-preservation, to defend her numerous and dispersed possessions in the Levant, against the arms of Mahomet II. All Italy indeed felt the peril that impended from that side; and these various motions occasioned a quadruple league in 1455, between the king of Naples, the duke of Milan, and the two republics, for the preservation of peace in Italy. One object of this alliance, and the prevailing object with Alfonso, was the implied guarantee of his succession in the kingdom of Naples to his illegitimate son, Ferdinand. He had no lawful issue; and there seemed no reason why an acquisition of his own valour should pass against his will to collateral heirs. The pope, as feudal superior of the kingdom, and the Neapolitan parliament, the sole competent tribunal, confirmed the inheritance of Ferdinand (1). Whatever may be thought of the claims subsisting in the house of Anjou, there can be no question that the reigning family of Aragon were legitimately excluded from that throne, though force and treachery enabled them ultimately to obtain it.

Quadruple league of 1455.

Character of Alfonso.

Alfonso, sirnamed the Magnanimous, was by far the most accomplished sovereign whom the fifteenth century produced. The virtues of chivalry were combined in him with the patronage of letters, and with more than their patronage, a real enthusiasm for learning, seldom found in a king, and especially in one so active and ambitious (2). This devotion to literature was, among the Italians of that age, almost as sure a passport to general admiration, as his more chivalrous perfection. Magnificence in architecture, and the pageantry of a splendid court, gave fresh

1428, is said to have cost the republic of Florence 3,500,000 florins. Ammirato, p. 1043.

(1) Giannone, l. xxvi. c. 2.

(2) A story is told, true or false, that his delight in hearing Quintus Curtius read, without any other medicine, cured the king of an illness. See other proofs of his love of letters in Tiraboschi, t. vi. p. 40.

lustre to his reign. The Neapolitans perceived with grateful pride, that he lived almost entirely among them, in preference to his patrimonial kingdom; and forgave the heavy taxes, which faults nearly allied to his virtues, profuseness and ambition, compelled him to impose (1). But they remarked a very different character in his son. Ferdinand was as dark and vindictive as his father was affable and generous. The barons, who had many opportunities of ascertaining his disposition, began, immediately upon Alfonso's death, to cabal against his succession, turning their eyes first to the legitimate branch of the family, and, on finding that prospect not favourable, to John, titular duke of Calábria, son of Regnier of Anjou, who survived to protest against the revolution that had dethroned him. John was easily prevailed upon to undertake an invasion of Naples. Notwithstanding the treaty concluded in 1455, Florence assisted him with money, and Venice at least with her wishes; but Sforza remained unshaken in that alliance with Ferdinand, which his clear-sighted policy discerned to be the best safeguard for his own dynasty. A large proportion of the Neapolitan nobility, including Orsini, prince of Tarento, the most powerful vassal of the crown, raised the banner of Anjou, which was sustained also by the youngest Piccinino, the last of the great condottieri, under whose command the veterans of former warfare rejoiced to serve. But John underwent the fate that had always attended his family in their long competition for that throne. After some brilliant successes, his want of resources, aggravated by the defection of Genoa, on whose ancient enmity to the house of Aragon he had relied, was perceived by the barons of his party, who, according to the practice of their ancestors, returned one by one to the allegiance of Ferdinand.

Ferdinand.

1461

1464

The peace of Italy was little disturbed, except by a few domestic revolutions, for several years after this Neapolitan war (2). Even the most short-sighted politicians were sometimes withdrawn from selfish objects

State of Italy in the latter part of the fifteenth century.

(1) Giannone, l. xxvi.

(2) The following distribution of a tax of 458,000 florins, imposed, or rather proposed, in 1464, to defray the expense of a general war against the Turks, will give a notion of the relative wealth and resources of the Italian powers; but it is probable that the pope rated himself above his fair contingent. He was to pay 100,000 florins; the Venetians 100,000; Ferdinand of Naples 80,000; the duke of Milan 70,000; Florence 50,000; the duke of Modena 20,000; Siena 15,000; the marquis of Mantua 10,000; Lucca 8,000; the marquis of Montferrat 5,000. Sismondi, t. x. p. 229. A similar assessment occurs, p. 307., where the proportions are not quite the same.

Perhaps it may be worth while to extract an estimate of the force of all Christian powers, written about 1454, from Sanuto's Lives of the Doges of Venice, p. 963. Some parts, however, appear very questionable. The king of France, it is said, can raise 30,000 men at arms; but for any foreign enterprize only 15,000. The king of England can do the same. These powers are exactly equal; otherwise one of the two would be destroyed. The king of Scotland, "ch' è signore di grandi paesi e popoli con grande povertà," can raise 10,000 men at arms: The king of Norway the same: The king of Spain (Castile) 30,000: The king of Portugal 6,000: The duke of Savoy 8,000: The duke of Milan 10,000. The republic of Venice can pay from her revenues 10,000: That of Florence 4,000: The pope 6,000. The emperor and empire can raise 60,000: The king of Hungary 80,000: (not men at arms, certainly.)

The kings of France, in 1414, had 2,000,000 ducats of revenue; but now only half. The king of England had then as much; now only 700,000. The king of Spain's revenue also is reduced by the wars from 3,000,000 to 800,000. The duke of Burgundy had 3,000,000; now 900,000. The duke of

by the appalling progress of the Turks, though there was not energy enough in their councils to form any concerted plans for their own security. Venice maintained a long, but ultimately an unsuccessful contest with Mahomet II., for her maritime acquisitions in Greece and Albania; and it was not till after his death relieved Italy from its immediate terror, that the ambitious republic endeavoured to extend its territories by encroaching on the house of Este. Nor had Milan shewn much disposition towards aggrandizement. Francesco Sforza had been succeeded, such is the condition of despotic governments, by his son Galeazzo, a tyrant more execrable than the worst of the Visconti. His extreme cruelties, and the insolence of a debauchery that gloried in the public dishonour of families, excited a few daring spirits to assassinate him. The Milanese profited by a tyrannicide, the perpetrators of which they had not courage or gratitude to protect. The regency of Bonne of Savoy, mother of the infant duke, Gian Galeazzo, deserved the praise of wisdom and moderation. But it was overthrown in a few years by Ludovico Sforza, sirnamed the Moor, her husband's brother; who while he proclaimed his nephew's majority, and affected to treat him as a sovereign, hardly disguised in his conduct towards foreign states, that he had usurped for himself the sole direction of government.

1482

1476

1480

Affairs of Genoa in that age.

The annals of one of the few surviving republics, that of Genoa, present to us, during the fifteenth as well as the preceding century, an unceasing series of revolutions, the shortest enumeration of which would occupy several pages. Torn by the factions of Adorni and Fregosi, equal and eternal rivals, to whom the old patrician families of Doria and Fieschi were content to become secondary, sometimes sinking from weariness of civil tumult into the grasp of Milan or France, and again, from impatience of foreign subjection, starting back from servitude to anarchy, the Genoa of those ages exhibits a singular contrast to the calm and regular aristocracy of the last three centuries. The latest revolution within the compass of this work was in 1488, when the duke of Milan became sovereign, an Adorno holding the office of doge as his lieutenant.

and of Florence.

Florence, the most illustrious and fortunate of Italian republics, was now rapidly descending from her rank among free commonwealths, though surrounded with more

Milan has sunk from 1,000,000 to 500,000; Venice from 1,100,000, which she possessed in 1428, to 800,000: Florence from 400,000 to 200,000.

These statistical calculations are chiefly remarkable, as they manifest that comprehensive spirit of treating all the powers of Europe as parts of a common system, which began to actuate the Italians of the fifteenth century. Of these enlarged views of policy the writings of Æneas Sylvius afford an eminent instance. Besides the more general and insensible causes, the increase of navigation and revival of literature, this may be ascribed to the continual danger from the progress of the Ottoman arms, which led the politicians of that part of Europe most exposed to them, into more extensive views as to the resources and dispositions of Christian states.

than usual lustre in the eyes of Europe. We must take up the story of that city from the revolution of 1382, which restored the ancient Guelf aristocracy, or party of the Albizi, to the ascendency of which a popular insurrection had stripped them. Fifty years elapsed during which this party retained the government in its own hands with few attempts at disturbance. Their principal adversaries had been exiled, according to the invariable and perhaps necessary custom of a republic; the populace and inferior artizans were dispirited by their ill success. Compared with the leaders of other factions, Maso degl' Albizi, and Nicola di Uzzano, who succeeded him in the management of his party, were attached to a constitutional liberty. Yet so difficult is it for any government, which does not rest on a broad basis of public consent, to avoid injustice, that they twice deemed it necessary to violate the ancient constitution. In 1393, after a partial movement in behalf of the vanquished faction, they assembled a parliament, and established what was technically called at Florence a Balia (1). This was a temporary delegation of sovereignty to a number, generally a considerable number, of citizens, who, during the period of their dictatorship, named the magistrates, instead of drawing them by lot, and banished suspected individuals. A precedent so dangerous was eventually fatal to themselves, and to the freedom of their country. Besides this temporary balia, the regular scrutinies periodically made in order to replenish the bags, out of which the names of all magistrates were drawn by lot, according to the constitution established in 1328, were so managed as to exclude all persons disaffected to the dominant faction. But, for still greater security, a council of two hundred was formed in 1411, out of those alone who had enjoyed some of the higher offices within the last thirty years, the period of the aristocratical ascendency, through which every proposition was to pass before it could be submitted to the two legislative councils (2). These precautions indicate a government conscious of public enmity; and if the Albizi had continued to sway the republic of Florence, their jealousy of the people would have suggested still more innovations, till the constitution had acquired, in legal form as well as substance, an absolutely aristocratical character.

Rise of the Medici.

But, while crushing with deliberate severity their avowed adversaries, the ruling party had left one family whose prudence gave no reasonable excuse for persecuting them; and whose popularity, as well as wealth, rendered the experiment hazardous. The Medici were among the most considerable of the new, or plebeian nobility. From the first years of the fourteenth century, their name not very unfrequently occurs in the domestic and military annals of Flo-

(1) Ammirato, p. 840. (2) Id. p. 961.

rence (1). Salvestro de' Medici, who had been partially implicated in the democratical revolution that lasted from 1378 to 1382, escaped proscription on the revival of the Guelf party, though some of his family were afterwards banished. Throughout the long depression of the popular faction, the house of Medici was always regarded as their consolation and their hope. That house was now represented by Giovanni (2), whose immense wealth, honourably acquired by commercial dealings, which had already rendered the name celebrated in Europe, was expended with liberality and magnificence. Of a mild temper, and averse to cabals, Giovanni de' Medici did not attempt to set up a party, and contented himself with repressing some fresh encroachments on the popular part of the constitution, which the Albizi were disposed to make (3). They, in their turn, freely admitted him to that share in public councils, to which he was entitled by his eminence and virtues; a proof that the spirit of their administration was not illiberally exclusive. But on the death of Giovanni, his son Cosmo de' Medici, inheriting his father's riches and estimation, with more talents and more ambition, thought it time to avail himself of the popularity belonging to his name. By extensive connexions with the most eminent men in Italy, especially with Sforza, he came to be considered as the first citizen of Florence. The oligarchy were more than ever unpopular. Their administration, since 1382, had indeed been in general eminently successful; the acquisition of Pisa, and of other Tuscan cities, had aggrandized the republic, while from the port of Leghorn, her ships had begun to trade with Alexandria, and sometimes to contend with the Genoese (4). But an unprosperous war with Lucca diminished a reputation which was never sustained by public affection. Cosmo and his friends aggravated the errors of the government, which having lost its wise and temperate leader, Nicola di Uzzano, had fallen into the rasher hands of Rinaldo degl' Albizi. He incurred the blame of being the first aggressor in a struggle which had become inevitable. Cosmo was
1433 arrested by command of a gonfalonier devoted to the Albizi, and condemned to banishment. But the oligarchy had done too much or too little. The city was full of his friends; the honours

(1) The Medici are enumerated by Villani among the chiefs of the Black faction in 1304, l. viii. c. 71. One of that family was beheaded by order of the duke of Athens in 1343. l. xii. c. 2. It is singular that Mr. Roscoe should refer their first appearance in history, as he seems to do, to the siege of Scarperi in 1351.

(2) Giovanni was not nearly related to Salvestro de' Medici. Their families are said per lungo tratto allontanarsi. Ammirato, p. 992. Nevertheless, his being drawn gonfalonier in 1421 created a great sensation in the city, and prepared the way to the subsequent revolution. Ibid. Machiavelli, l. iv.

(3) Machiavelli, Istoria Fiorent. l. iv.

(4) The Florentines sent their first merchant ship to Alexandria in 1422, with great and anxious hopes. Prayers were ordered for the success of the republic by sea; and an embassy dispatched with presents to conciliate the sultan of Babylon, that is, of Grand Cairo. Ammirato, p. 997. Florence had never before been so wealthy. The circulating money was reckoned (perhaps extravagantly) at 4,000,000 florins. The manufactures of silk and cloth of gold had never flourished so much. Architecture revived under Brunelleschi; literature under Leonard Aretin and Filelfo. p. 977. There is some truth in M. Sismondi's remark, that the Medici have derived part of their glory from their predecessors in government, whom they subverted, and whom they have rendered obscure. But the Milanese war, breaking out in 1423, tended a good deal to impoverish the city.

conferred upon him in his exile attested the sentiments of Italy. Next year he was recalled in triumph to Florence, and the Albizi were completely overthrown.

It is vain to expect, that a victorious faction will scruple to retaliate upon its enemies a still greater measure of injustice than it experienced at their hands. The vanquished have no rights in the eyes of a conqueror. The sword of returning exiles, flushed by victory, and incensed by suffering, falls successively upon their enemies, upon those whom they suspect of being enemies, upon those who may hereafter become such. The Albizi had in general respected the legal forms of their free republic, which good citizens, and perhaps themselves, might hope one day to see more effective. The Medici made all their government conducive to hereditary monarchy. A multitude of noble citizens were driven from their country; some were even put to death. A balia was appointed for ten years to exclude all the Albizi from magistracy, and, for the sake of this security to the ruling faction, to supersede the legitimate institutions of the republic. After the expiration of this period, the dictatorial power was renewed on pretence of fresh danger, and this was repeated six times in twenty-one years (1). In 1455, the constitutional mode of drawing magistrates was permitted to revive, against the wishes of some of the leading party. They had good reason to be jealous of a liberty, which was incompatible with their usurpation. The gonfaloniers, drawn at random from among respectable citizens, began to act with an independence to which the new oligarchy was little accustomed. Cosmo, indeed, the acknowledged chief of the party, perceiving that some who had acted in insubordination to him were looking forward to the opportunity of becoming themselves its leaders, was not unwilling to throw upon them the unpopularity attached to an usurpation by which he had maintained his influence. Without his apparent participation, though not against his will, the free constitution was again suspended by a balia appointed for the nomination of magistrates; and the regular drawing of names by lot was never, I believe, restored (2). Cosmo died at an advanced age in 1464. His son Piero de' Medici, though not deficient either in virtues or abilities, seemed too infirm in health for the administration of public affairs. At least, he could only be chosen by a sort of hereditary title, which the party above-mentioned, some from patriotic, more from selfish motives, were reluctant to admit. A strong opposition was raised to the family pretensions of the Medici. Like all Florentine factions, it trusted to violence; and the chance of arms was not in its favour. There is little to regret in the downfall of that oligarchy, which had all the disregard of popular rights without the generous virtues of the Medici (3).

(1) Machiavelli, l. v. Ammirato.
(2) Ammirato, t. ii. p. 82—87.
(3) Idem, p. 93. Roscoe's Lorenzo de' Medici, ch. 2. Machiavelli. Sismondi. The two latter

From this revolution in 1466, when some of the most considerable citizens were banished, we may date an acknowledged supremacy in the house of Medici, the chief of which nominated the regular magistrates, and drew to himself the whole conduct of the republic.

Lorenzo de' Medici. 1469

The two sons of Piero, Lorenzo and Julian, especially the former, though young at their father's death, assumed, by the request of their friends, the reins of government. It was impossible that, among a people who had so many recollections to attach to the name of liberty, among so many citizens whom their ancient constitution invited to public trust, the controul of a single family should excite no dissatisfaction; and perhaps their want of any positive authority heightened the appearance of usurpation in their influence. But if the people's wish to resign their freedom gives a title to accept the government of a country, the Medici were no usurpers. That family never lost the affections of the populace. The cry of Palle, Palle (their armorial distinction) would at any time rouse the Florentines to defend the chosen patrons of the republic. If their substantial influence could before be questioned, the conspiracy of the Pazzi, wherein Julian perished, excited an enthusiasm for the surviving brother, that never ceased during his life. Nor was this any thing unnatural, or any severe reproach to Florence. All around, in Lombardy and Romagna, the lamp of liberty had long since been extinguished in blood. The freedom of Siena and Genoa was dearly purchased by revolutionary proscriptions; that of Venice was only a name. The republic which had preserved longest, and with greatest purity, that vestal fire, had at least no relative degradation to fear in surrendering herself to Lorenzo de' Medici. I need not in this place expatiate upon what the name instantly suggests, the patronage of science and art, and the constellation of scholars and poets, of architects and painters, whose reflected beams cast their radiance around his head. His political reputation, though far less durable, was in his own age as conspicuous as that which he acquired in the history of letters. Equally active and sagacious, he held his way through the varying combinations of Italian policy, always with credit, and generally with success. Florence, if not enriched, was upon the whole aggrandized during his administration, which was exposed to some severe storms from the unscrupulous adversaries, Sixtus IV. and Ferdinand of Naples, whom he was compelled to resist. As a patriot, indeed, we never can bestow upon Lorenzo de' Medici the meed of disinterested virtue. He completed that subversion of the Florentine republic, which his two immediate ancestors had so well prepared. The two councils, her regular legislature, he superseded by a permanent senate of seventy persons (1); while the gonfalonier and priors, become a mockery and

are perpetual references in this part of history, where no other is made.

(1) Ammirato, p. 145. Machiavel says, l. viii., that this was done ristringere il governo, e che le

pageant, to keep up the illusion of liberty, were taught that in exercising a legitimate authority, without the sanction of their prince, a name now first heard at Florence, they incurred the risk of punishment for their audacity (1). Even the total dilapidation of his commercial wealth was repaired at the cost of the state; and the republic disgracefully screened the bankruptcy of the Medici, by her own (2). But, compared with the statesmen of his age, we can reproach Lorenzo with no heinous crime. He had many enemies; his descendants had many more; but no unequivocal charge of treachery or assassination has been substantiated against his memory. By the side of Galeazzo or Ludovico Sforzza, of Ferdinand or his son Alfonso of Naples, of the pope Sixtus IV., he shines with unspotted lustre. So much was Lorenzo esteemed by his contemporaries, that his premature death has frequently been considered as the cause of those unhappy revolutions that speedily ensued, and which his foresight would, it was imagined, have been able to prevent; an opinion which, whether founded in probability or otherwise, attests the common sentiment about his character. 1492

Pretensions of France upon Naples.

If indeed Lorenzo de' Medici could not have changed the destinies of Italy, however premature his death may appear, if we consider the ordinary duration of human existence, it must be admitted, that for his own welfare, perhaps for his glory, he had lived out the full measure of his time. An age of new and uncommon revolutions was about to arise, among the earliest of which the temporary downfall of his family was to be reckoned. The long contested succession of Naples was again to involve Italy in war. The ambition of strangers was once more to desolate her plains. Ferdinand, king of Naples, had reigned for thirty years after the discomfiture of his competitor,

deliberazioni importanti si riducessero in minore numero. Mr. Roscoe, vol. ii. p. 53., is puzzled how to explain this decided breach of the people's rights by his hero. But though it rather appears from Ammirato's expressions, that the two councils were now abolished, yet from M. Sismondi, t. xi. p. 186., who quotes an author I have not seen, and from Nardi, p. 7., I should infer that they still formally subsisted.

(1) Cambi, a gonfalonier of justice, had, in concert with the priors, admonished some public officers for a breach of duty. Fu giudicato questo atto molto superbo, says Ammirato, che senza partecipazione di Lorenzo de' Medici, principe del governo, fosse seguito, che in Pisa in quel tempo si ritrovava. p. 184. The gonfalonier was fined for executing his constitutional functions. This was a downright confession that the republic was at an end; and all it provokes M. Sismondi to say, is not too much. t. xi. p. 345.

(2) Since the Medici took on themselves the character of princes, they had forgotten how to be merchants. But imprudently enough, they had not discontinued their commerce, which was of course mismanaged by agents, whom they did not overlook. The consequence was the complete dilapidation of their vast fortune. The public revenues had been for some years applied to make up its deficiencies. But from the measures adopted by the republic, if we may still use that name, she should appear to have considered herself, rather than Lorenzo, as the debtor. The interest of the public debt was diminished one half. Many charitable foundations were suppressed. The circulating specie was taken at one fifth below its nominal value in payment of taxes, while the government continued to issue it at its former rate. Thus was Lorenzo reimbursed a part of his loss, at the expense of all his fellow citizens. Sismondi, t. xi. p. 347. It is slightly alluded to by Machiavel.

The vast expenditure of the Medici for the sake of political influence would of itself have absorbed all their profits. Cosmo is said by Guicciardini to have spent 400,000 ducats in building churches, monasteries, and other public works. l. i. p. 91. The expenses of the family between 1434 and 1471 in buildings, charities, and taxes alone, amounted to 663,755 florins; equal in value, according to Sismondi, to 32,000,000 francs at present. Hist. des Républ. t. x. p. 173. They seem to have advanced monies imprudently, through their agents, to Edward IV., who was not the best of debtors. Comines, Mém. de Charles VIII., l. vii. c. 6.

CHAPTER IV.

THE HISTORY OF SPAIN TO THE CONQUEST OF GRANADA.

Kingdom of the Visigoths—Conquest of Spain by the Moors—Gradual Revival of the Spanish Nation—Kingdoms of Leon, Aragon, Navarre, and Castile, successively formed—Chartered Towns of Castile—Military Orders—Conquests of Ferdinand III. and James of Aragon—Causes of the Delay in expelling the Moors—History of Castile continued—Character of the Government—Peter the Cruel—House of Trastamare—John II.—Henry IV.—Constitution of Castile—National Assemblies or Cortes—their constituent Parts—Right of Taxation—Legislation—Privy Council of Castile—Laws for the Protection of Liberty—Imperfections of the Constitution—Aragon—its History in the fourteenth and fifteenth Centuries—disputed Succession—Constitution of Aragon—free Spirit of its Aristocracy—Privilege of Union—Powers of the Justiza—Legal Securities—Illustrations—other Constitutional Laws—Valencia and Catalonia—Union of two Crowns by the Marriage of Ferdinand and Isabella—Conquest of Granada.

Kingdom of Visigoths in Spain.

The history of Spain during the middle ages ought to commence with the dynasty of the Visigoths; a nation among the first that assaulted and overthrew the Roman Empire, and whose establishment preceded by nearly half a century the invasion of Clovis. Vanquished by that conqueror in the battle of Poitiers, the Gothic monarchs lost their extensive dominions in Gaul, and transferred their residence from Toulouse to Toledo. But I hold the annals of barbarians so unworthy of remembrance, that I will not detain the reader by naming one sovereign of that obscure race. The Merovingian kings of France were perhaps as deeply stained by atrocious crimes, but their history, slightly as I have noticed it, is the necessary foundation of that of Charlemagne, and illustrates the feudal system and constitutional antiquities of France. If those of Castile had been equally interesting to the historical student, I should have taken the same pains to trace their original in the Gothic monarchy. For that is at least as much the primary source of the old Castilian constitution, as the Anglo-Saxon polity of our own. It may however suffice to mention, that it differed in several respects from that of the Franks during the same period. The crown was less hereditary, or at least the regular succession was more frequently disturbed. The prelates had a still more commanding influence in temporal government. The distinction of Romans and barbarians was less marked, the laws more uniform, and approaching nearly to the imperial code. The power of the sovereign was perhaps more limited by an aristocratical council than in France, but it never yielded to the dangerous influence of mayors of the palace. Civil wars and disputed successions were very frequent, but the integrity of the kingdom was not violated by the custom of partition.

Conquest by the Saracens.

Spain, after remaining for nearly three centuries in the possession of the Visigoths, fell under the yoke of the Saracens in 712. The fervid and irresistible enthusiasm which

distinguished the youthful period of Mohammedism, might sufficiently account for this conquest; even if we could not assign additional causes,—the factions which divided the Goths, the resentment of disappointed pretenders to the throne, the provocations of Count Julian, and the temerity that risked the fate of an empire on the chances of a single battle. It is more surprising, that a remnant of this ancient monarchy should not only have preserved its national liberty and name in the northern mountains, but waged for some centuries a successful, and generally an offensive warfare against the conquerors, till the balance was completely turned in its favour, and the Moors were compelled to maintain almost as obstinate and protracted a contest for a small portion of the peninsula. But the Arabian monarchs of Cordova found in their success and imagined security a pretext for indolence; even in the cultivation of science, and contemplation of the magnificent architecture of their mosques and palaces, they forgot their poor, but daring enemies in the Asturias; while, according to the nature of despotism, the fruits of wisdom or bravery in one generation were lost in the follies and effeminacy of the next. Their kingdom was dismembered by successful rebels, who formed the states of Toledo, Huesca, Saragosa, and other less eminent; and these, in their own mutual contests, not only relaxed their natural enmity towards the Christian princes, but sometimes sought their alliance (1).

Kingdom of Leon.

The last attack, which seemed to endanger the reviving monarchy of Spain, was that of Almanzor, the illustrious vizir of Haccham II., towards the end of the tenth century, wherein the city of Leon, and even the shrine of Compostella, were burned to the ground. For some ages before this transient reflux, gradual encroachments had been made upon the Saracens; and the kingdom, originally styled of Oviedo, the seat of which was removed to Leon in 914, had extended its boundary to the Duero, and even to the mountainous chain of the Guadarrama. The province of Old Castile, thus denominated, as is generally supposed, from the castles erected while it remained a march or frontier against the Moors, was governed by hereditary counts, elected originally by the provincial aristocracy, and virtually independent, it seems probable, of the kings of Leon, though commonly serving them in war, as brethren of the same faith and nation (2).

Kingdoms of Navarre and Aragon.

While the kings of Leon were thus occupied in recovering the western provinces, another race of Chris-

(1) Cardonne, Histoire de l'Afrique et de l'Espagne.

(2) According to Roderic of Toledo, one of the earliest Spanish historians, though not older than the beginning of the thirteenth century, the nobles of Castile, in the reign of Froila, about the year 924, sibi et posteris providerunt, et duos milites non de potentioribus, sed de prudentioribus elegerunt, quos et judices statuerunt, ut dissensiones patriæ et querelantium causæ suo judicio sopirentur. l. v. c. 1. Several other passages in the same writer prove that the counts of Castile were nearly independent of Leon, at least from the time of Ferdinand Gonsalvo, about the middle of the tenth century. Ex quo iste suscepit suæ patriæ comitatum, cessaverunt reges Asturiarum insolescere in Castellam, et à flumine Pisoricâ nihil amplius vindicârunt. l. v. c. 2. Marina, in his Ensayo Histórico-Crítico, is disposed to controvert this fact.

tian princes grew up silently under the shadow of the Pyrenean mountains. Nothing can be more obscure than the beginnings of those little states, which were formed in Navarre and the country of Soprarbe. They might perhaps be almost contemporaneous with the Moorish conquests. On both sides of the Pyrenees dwelt an aboriginal people; the last to undergo the yoke, and who had never acquired the language of Rome. We know little of these intrepid mountaineers in the dark period which elapsed under the Gothic and Frank dynasties, till we find them cutting off the rearguard of Charlemagne in Roncesvalles, and maintaining at least their independence, though seldom, like the kings of Asturias, waging offensive war against the Saracens. The town of Jaca, situated among long narrow vallies that intersect the southern ridges of the Pyrenees, was the capital of a little free state, which afterwards expanded into the monarchy of Aragon (1). A territory rather more extensive belonged to Navarre, the kings of which fixed their seat at Pampelona. Biscay seems to have been divided between this kingdom and that of Leon. The connexion of Aragon or Soprarbe and Navarre was very intimate, and they were often united under a single chief.

Kingdom of Castile.

At the beginning of the eleventh century, Sancho the Great, king of Navarre and Aragon, was enabled to render his second son Ferdinand, count, or, as he assumed the title, king of Castile. This effectually dismembered that province from the kingdom of Leon; but their union soon became more complete than ever, though with a reversed supremacy. Bermudo III., king of Leon, fell in a battle with the new king of Castile, who had married his sister; and Ferdinand in her right, or in that of conquest, became master of the united monarchy. This cessation of hostilities between the Christian states enabled them to direct a more unremitting energy against their ancient enemies, who were now sensibly weakened by the various causes of decline to which I have already alluded. During the eleventh century, the Spaniards were almost always superior in the field; the towns, which they began by pillaging, they gradually possessed; their valour was heightened by the customs of chivalry, and inspired by the example of the Cid; and before the end of this age, Al-

(1) The Fueros, or written laws of Jaca, were perhaps more ancient than any local customary in Europe. Alfonso III. confirms them by name of the ancient usages of Jaca. They prescribe the descent of lands and moveables, as well as the election of municipal magistrates. The following law, which enjoins the rising in arms on a sudden emergency, illustrates, with a sort of romantic wildness, the manners of a pastoral, but warlike people, and reminds us of a well-known passage in the Lady of the Lake. De appellitis ita statuimus. Cùm homines de villis, vel qui stant in montanis cum suis ganatis [gregibus], audierint appellitum, omnes capiant arma, et dimissis ganatis, et omnibus aliis suis faziendis [negotiis], sequantur appellitum. Et si illi qui fuerint magis remoti, invenerint in villâ magis proximâ appellito, [deest aliquid ?] omnes qui nondùm fuerint egressi tunc villam illam, quæ tardiùs secuta est appellitum, pecent [solvant] unam baccam [vaccam]; et unusquisque homo ex illis qui tardiùs secutus est appellitum, et quem magis remoti præcesserint, pecet tres solidos, quomodò nobis videbitur partiendos. Tamen in Jacâ et in aliis villis, sint aliqui nominati et certi, quos elegerint consules, qui remaneant ad villas custodiendas et defendendas. Blancas Commentaria in Schotti Hispania illustrata, p. 595.

fonso VI. recovered the ancient metropolis of the monarchy, the city of Toledo. This was the severest blow which the Moors had endured, and an unequivocal symptom of that change in their relative strength, which, from being so gradual, was the more irretrievable. Calamities scarcely inferior fell upon them in a different quarter. The kings of Aragon (a title belonging originally to a little district upon the river of that name) had been cooped up almost in the mountains by the small Moorish states north of the Ebro, especially that of Huesca. About the middle of the eleventh century, they began to attack their neighbours with success; the Moors lost one town after another, till in 1118, exposed and weakened by the reduction of all these places, the city of Saragosa, in which a line of Mohammedan princes had flourished for several ages, became the prize of Alfonso I. and the capital of his kingdom. The southern parts of what is now the province of Aragon were successively reduced during the twelfth century; while all new Castile and Estremadura became annexed in the same gradual manner to the dominion of the descendants of Alfonso VI.

Capture of Toledo.

and Saragosa.

Although the feudal system cannot be said to have obtained in the kingdoms of Leon and Castile, their peculiar situation gave the aristocracy a great deal of the same power and independence, which resulted in France and Germany from that institution. The territory successively recovered from the Moors, like waste lands reclaimed, could have no proprietor but the conquerors; and the prospect of such acquisitions was a constant incitement to the nobility of Spain, especially to those who had settled themselves on the Castilian frontier. In their new conquests, they built towns and invited Christian settlers, the Saracen inhabitants being commonly expelled, or voluntarily retreating to the safer provinces of the south. Thus Burgos was settled by a count of Castile about 880; another fixed his seat at Osma; a third at Sepulveda; a fourth at Salamanca. These cities were not free from incessant peril of a sudden attack till the union of the two kingdoms under Ferdinand I., and consequently the necessity of keeping in exercise a numerous and armed population gave a character of personal freedom and privilege to the inferior classes, which they hardly possessed at so early a period in any other monarchy. Villenage seems never to have been established in the Hispano-Gothic kingdoms of Leon and Castile; though I confess it was far from being unknown in that of Aragon, which had formed its institutions on a feudal pattern. Since nothing makes us forget the arbitrary distinctions of rank so much as participation in any common calamity, every man who had escaped the great shipwreck of liberty and religion in the mountains of Asturias was invested with a personal dignity, which gave him value in his own eyes and those of his country. It is probably this sentiment, trans-

Mode of settling the new conquests.

mitted to posterity, and gradually fixing the national character, that has produced the elevation of manner, remarked by travellers in the Castilian peasant. But while these acquisitions of the nobility promoted the grand object of winning back the peninsula from its invaders, they by no means invigorated the government, or tended to domestic tranquillity.

Chartered towns or communities.

A more interesting method of securing the public defence was by the institution of chartered towns or communities. These were established at an earlier period than in France and England, and were in some degree of a peculiar description. Instead of purchasing their immunities, and almost their personal freedom, at the hands of a master, the burgesses of Castilian towns were invested with civil rights and extensive property on the more liberal condition of protecting their country. The earliest instance of the erection of a community is in 1020, when Alfonso V. in the cortes at Leon established the privileges of that city, with a regular code of laws, by which its magistrates should be governed. The citizens of Carrion, Llanes, and other towns were incorporated by the same prince. Sancho the Great gave a similar constitution to Naxara. Sepulveda had its code of laws in 1076 from Alfonso VI.; in the same reign Logrono and Sahagun acquired their privileges, and Salamanca not long afterwards. The fuero, or original charter of a Spanish community, was properly a compact, by which the king or lord granted a town and adjacent district to the burgesses, with various privileges, and especially that of chusing magistrates and a common council, who were bound to conform themselves to the laws prescribed by the founder. These laws, civil as well as criminal, though essentially derived from the ancient code of the Visigoths, which continued to be the common law of Castile till the fourteenth or fifteenth century, varied from each other in particular usages, which had probably grown up and been established in these districts before their legal confirmation. The territory held by chartered towns was frequently very extensive, far beyond any comparison with corporations in our own country or in France; including the estates of private land-holders, subject to the jurisdiction and controul of the municipality, as well as its inalienable demesnes, allotted to the maintenance of the magistrates and other public expenses. In every town the king appointed a governor to receive the usual tributes, and watch over the police and the fortified places within the district; but the administration of justice was exclusively reserved to the inhabitants and their elected judges. Even the executive power of the royal officer was regarded with jealousy; he was forbidden to use violence towards any one without legal process; and, by the fuero of Logrono, if he attempted to enter forcibly into a private house, he might be killed with impunity. These democratical customs were altered in the fourteenth century by Alfonso XI.,

who vested the municipal administration in a small number of jurats, or regidors. A pretext for this was found in some disorders to which popular elections had led; but the real motive, of course, must have been to secure a greater influence for the crown, as in similar innovations of some English kings.

In recompense for such liberal concessions, the incorporated towns were bound to certain money payments, and to military service. This was absolutely due from every inhabitant, without dispensation or substitution, unless in case of infirmity. The royal governor and the magistrates, as in the simple times of primitive Rome, raised and commanded the militia; who, in a service always short, and for the most part necessary, preserved that delightful consciousness of freedom, under the standard of their fellow citizens and chosen leaders, which no mere soldier can enjoy. Every man of a certain property was bound to serve on horseback, and was exempted in return from the payment of taxes. This produced a distinction between the *caballeros,* or noble class, and the *pecheros,* or payers of tribute. But the distinction appears to have been founded only upon wealth, as in the Roman equites, and not upon hereditary rank, though it most likely prepared the way for the latter. The horses of these caballeros could not be seized for debt; in some cases, they were exclusively eligible to magistracy; and their honour was protected by laws which rendered it highly penal to insult or molest them. But the civil rights of rich and poor in courts of justice were as equal as in England (1).

Military orders.

The progress of the Christian arms in Spain may in part be ascribed to another remarkable feature in the constitution of that country, the military orders. These had already been tried with signal effect in Palestine; and the similar circumstances of Spain easily led to an adoption of the same policy. In a very few years after the first institution of the Knights Templars, they were endowed with great estates, or rather districts, won from the Moors, on condition of defending their own, and the national territory. These lay chiefly in the parts of Aragon beyond the Ebro, the conquest of which was then recent and insecure (2). So extraordinary was the respect for this order, and that of St. John, and so powerful the conviction that the hope of Christendom rested upon their valour, that Alfonso the First, king of Aragon, dying childless, bequeathed to them his whole kingdom; an example of liberality, says Mariana, to surprise future times, and displease his own (3). The states of Aragon annulled, as may be supposed, this strange testament; but the successor of Alfonso was obliged to pa-

(1) I am indebted for this account of municipal towns in Castile to a book published at Madrid in 1808, immediately after the revolution, by the Doctor Marina, a canon of the church of St. Isidor, intitled, Ensayo Historico-Critico sobre la antigua legislacion y principales cuerpos legales de los reinos de Leon y Castilla, especialmente sobre el codigo de D. Alonso el Sabio, conocido con el nombre de las Siete Partidas. This work is perhaps not easily to be procured in England: but an article in the Edinburgh Review, No XLIII., will convey a sufficient notion of its contents.

(2) Mariana, Hist. Hispan. l. x. c. 10.

(3) L. x. c. 15.

cify the ambitious knights by immense concessions of money and territory; stipulating even not to make peace with the Moors against their will (1). In imitation of these great military orders, common to all Christendom, there arose three Spanish institutions of a similar kind, the orders of Calatrava, Santiago, and Alcantara. The first of these was established in 1158; the second and most famous had its charter from the pope in 1175, though it seems to have existed previously; the third branched off from that of Calatrava at a subsequent time (2). These were military colleges, having their walled towns in different parts of Castile, and governed by an elective grand master, whose influence in the state was at least equal to that of any of the nobility. In the civil dissensions of the fourteenth and fifteenth centuries, the chiefs of these incorporated knights were often very prominent.

Final union of Leon and Castile.

The kingdoms of Leon and Castile were unwisely divided anew by Alfonso VII., between his sons Sancho and Ferdinand, and this produced not only a separation, but a revival of the ancient jealousy with frequent wars for near a century. At length, in 1238, Ferdinand III., king of Castile, reunited for ever the two branches of the gothic monarchy. He employed their joint strength against the Moors, whose dominion, though it still embraced the finest provinces of the peninsula, was sinking by internal weakness, and had never recovered a tremendous defeat at Banos di Toloso, a few miles from Baylen, in 1210 (3). Ferdinand,

Conquest of Andalusia, 1236

bursting into Andalusia, took its great capital the city of Cordova, not less ennobled by the cultivation of Arabian science, and by the names of Avicenna and Averroes, than by the splendid works of a rich and munificent dynasty (4). In a few years more, Seville was added to his conquests, and the Moors lost their favourite regions on the banks of the Guadalquivir. James I. of Aragon, the victories of whose long reign

and Valencia.

gave him the sirname of Conqueror, reduced the city and kingdom of Valencia, the Balearic isles and the kingdom of Murcia; but the last was annexed, according to compact, to the crown of Castile.

Expulsion of the Moors long delayed.

It could hardly have been expected about the middle of the thirteenth century, when the splendid conquests of Ferdinand and James had planted the Christian ban-

(1) Mariana, Hist. Hisp. l. x. c. 18.

(2) L. xi. c. 6. 13.; l. xii. c. 3.

(3) A letter of Alfonso IX., who gained this victory, to Pope Innocent III., puts the loss of the Moors at 180,000 men. The Arabian historians, though without specifying numbers, seem to confirm this immense slaughter, which nevertheless it is difficult to conceive before the invention of gunpowder, or indeed since. Cardonne, t. ii. p. 327.

(4) If we can rely on a Moorish author, quoted by Cardonne, (t. i. p. 337.) the city of Cordova contained, I know not exactly in what century, 200,000 houses, 600 mosques, and 900 public baths. There were 12,000 towns and villages on the banks of the Guadalquivir. The mines of gold and silver were very productive. And the revenues of the khalifs of Cordova are said to have amounted to 130,000,000 of French money; besides large contributions that, according to the practice of oriental governments, were paid in the fruits of the earth. Other proofs of the extraordinary opulence and splendour of this monarchy are dispersed in Cardonne's work, from which they have been chiefly borrowed by later writers. The splendid engravings in Murphy's Moorish Antiquities of Spain illustrate this subject.

ner on the three principal Moorish cities, that two hundred and fifty years were yet to elapse before the rescue of Spain from their yoke should be completed. Ambition, religious zeal, national enmity, could not be supposed to pause in a career which now seemed to be obstructed by such moderate difficulties; but we find, on the contrary, the exertions of the Spaniards begin from this time to relax, and their acquisitions of territory to become more slow. One of the causes, undoubtedly, that produced this unexpected protraction of the contest was the superior means of resistance which the Moors found in retreating. Their population, spread originally over the whole of Spain, was now condensed, and, if I may so say, become no further compressible, in a single province. It had been mingled, in the northern and central parts, with the Mozarabic Christians, their subjects and tributaries, not perhaps treated with much injustice, yet naturally and irremediably their enemies. Toledo and Saragosa, when they fell under a Christian sovereign, were full of these inferior Christians, whose long intercourse with their masters has infused the tones and dialect of Arabia into the language of Castile (1). But in the twelfth century, the Moors, exasperated by defeat, and jealous of secret disaffection, began to persecute their Christian subjects, till they renounced or fled for their religion; so that, in the southern provinces, scarcely any professors of Christianity were left at the time of Ferdinand's invasion. An equally severe policy was adopted on the other side. The Moors had been permitted to dwell in Saragosa, as the Christians had dwelt before, subjects, not slaves; but on the capture of Seville, they were entirely expelled, and new settlers invited from every part of Spain. The strong fortified towns of Andalusia, such as Gibraltar, Algeziras, Tariffa, maintained also a more formidable resistance than had been experienced in Castile; they cost tedious sieges, were sometimes recovered by the enemy, and were always liable to his attacks. But the great protection of the Spanish Mohammedans was found in the alliance and ready aid of their kindred beyond the Straits. Accustomed to hear of the African Moors only as pirates, we cannot easily conceive the powerful dynasties, the warlike chiefs, the vast armies, which for seven or eight centuries illustrate the annals of that people. Their assistance was always afforded to the true believers in Spain, though their ambition was generally dreaded by those who stood in need of their valour (2).

Probably, however, the kings of Granada were most indebted to the indolence which gradually became characteristic of their enemies. By the cession of Murcia to Castile, the kingdom of Aragon shut itself out from the possibility of extending those conquests which had ennobled her earlier sovereigns; and their successors, not less ambitious and enterprizing, diverted their attention towards objects

(1) Mariana, l. xi. c. 1. Gibbon, c. 51. (2) Cardonne, t. ii. and iii. passim.

beyond the peninsula. The Castilian, patient and undesponding in bad success, loses his energy as the pressure becomes less heavy, and puts no ordinary evil in comparison with the exertions by which it must be removed. The greater part of his country freed by his arms, he was content to leave the enemy in a single province, rather than undergo the labour of making his triumph complete.

Alfonso X. 1252

If a similar spirit of insubordination had not been found compatible in earlier ages with the aggrandizement of the Castilian monarchy, we might ascribe its want of splendid successes against the Moors to the continued rebellions, which disturbed that government for more than a century after the death of Ferdinand III. His son, Alfonso X., might justly acquire the sirname of Wise for his general proficiency in learning, and especially in astronomical science, if these attainments deserved praise in a king who was incapable of preserving his subjects in their duty. As a legislator, Alfonso, by his code of the Siete Partidas, sacrificed the ecclesiastical rights of his crown to the usurpation of Rome (1); and his philosophy sunk below the level of ordinary prudence, when he permitted the phantom of an imperial crown in Germany to seduce his hopes for almost twenty years. For the sake of such an illusion he would even have withdrawn himself from Castile, if the states had not remonstrated against an expedition that would probably have cost him the kingdom. In the latter years of his turbulent reign, Alfonso had to contend against his son. The right of representation was hitherto unknown in Castile, which had borrowed little from the customs of feudal nations. By the received law of succession, the nearer was always preferred to the more remote, the son to the grandson. Alfonso X. had established the different maxim of representation by his code of the Siete Partidas, the authority of which, however, was not universally acknowledged. The question soon came to an issue, on the death of his elder son Ferdinand, leaving two male children. Sancho their uncle asserted his claim, founded upon the ancient Castilian right of succession; and this, chiefly no doubt through fear of arms, though it did not want plausible arguments, was ratified by an assembly of the cortes, and secured, notwithstanding the king's reluctance, by the courage of Sancho. But the descendants of Ferdinand, generally called the infants of la Cerda, by the protection of France, to whose royal family they were closely allied, and of Aragon, always prompt to interfere in the disputes of a rival people, continued to assert their pretensions for more than half a century, and, though they were not very successful, did not fail to aggravate the troubles of their country.

Civil disturbances of Castile.

The annals of Sancho IV., and his two immediate successors, Ferdinand IV. and Alfonso XI., present a series of unhappy and dishonourable civil dissensions with too much rapid-

(1) Marina, Ensayo Historico-Critico, p. 272, etc.

ity to be remembered or even understood. Although the Castilian nobility had no pretence to the original independence of the French peers, or to the liberties of feudal tenure, they assumed the same privilege of rebelling upon any provocation from their sovereign. When such occurred, they seem to have been permitted, by legal custom, to renounce their allegiance by a solemn instrument, which exempted them from the penalties of treason (1). A very few families composed an oligarchy, the worst and most ruinous condition of political society, alternately the favourites and ministers of the prince, or in arms against him. If unable to protect themselves in their walled towns, and by the aid of their faction, these Christian patriots retired to Aragon or Granada, and excited an hostile power against their country and perhaps their religion. Nothing is more common in the Castilian history, than instances of such defection. Mariana remarks coolly of the family of Castro, that they were much in the habit of revolting to the Moors (2). This house and that of Lara were at one time the great rivals for power; but from the time of Alfonso X. the former seems to have declined, and the sole family that came in competition with the Laras, during the tempestuous period that followed, was that of Haro, which possessed the lordship of Biscay by an hereditary title. The evils of a weak government were aggravated by the unfortunate circumstances in which Ferdinand IV. and Alfonso XI. ascended the throne; both minors, with a disputed regency, and the interval too short to give ambitious spirits leisure to subside. There is indeed some apology for the conduct of the Laras and Haros in the character of their sovereigns, who had but one favourite method of avenging a dissembled injury, or anticipating a suspected treason. Sancho IV. assassinates Don Lope Haro in his palace at Valladolid. Alfonso XI. invites to court the infant Don Juan, his first cousin, and commits a similar violence. Such crimes may be found in the history of other countries, but they were no where so usual as in Spain, which was far behind France, England, and even Germany, in civilization.

Sancho IV. 1284. Ferdinand IV. 1295. Alfonso XI. 1312.

But whatever violence and arbitrary spirit might be imputed to Sancho and Alfonso, was forgotten in the unexampled tyranny of Peter the Cruel. A suspicion is frequently intimated by Mariana, which seems, in more modern times, to have gained credit, that party malevolence has at least grossly exaggerated the enormities of this prince (3). It is difficult, however, to

Peter the Cruel. 1350

(1) Mariana, l. xiii. c. 11.

(2) Alvarus Castrius patriâ aliquantò anteà, uti moris erat, renunciatâ.—Castria gens per hæc tempora ad Mauros sæpè defecisse visa est, l. xii. c. 12. See also chapters 17. and 19.

(3) There is in general room enough for scepticism as to the characters of men, who are only known to us through their enemies. History is full of calumnies, and of calumnies that can never be effaced. But I really see no ground for thinking charitably of Peter the Cruel. Froissart, part i. c. 230., and Matteo Villani, (in Script. Rer. Italic. t. xiv. p. 43.) the latter of whom died before the rebellion of Henry of Trastamare, speak of him much in the same terms as the Spanish historians. And why should Ayala be doubted, when he gives a long list of murders committed in the face of day, within the recollection of many

believe that a number of atrocious acts, unconnected with each other, and generally notorious enough in their circumstances, have been ascribed to any innocent man. The history of his reign, chiefly derived, it is admitted, from the pen of an inveterate enemy, Lope de Ayala, charges him with the murder of his wife, Blanche of Bourbon, most of his brothers and sisters, with Eleanor Gusman their mother, many Castilian nobles, and multitudes of the commonalty; besides continual outrages of licentiousness, and especially a pretended marriage with a noble lady of the Castrian family. At length a rebellion was headed by his illegitimate brother Henry, count of Trastamare, with the assistance of Aragon and Portugal. This, however, would probably have failed of dethroning Peter, a resolute prince, and certainly not destitute of many faithful supporters, if Henry had not invoked the more powerful succour of Bertrand du Guesclin, and the companies of adventure, who, after the pacification between France and England, had lost the occupation of war, and retained only that of plunder. With mercenaries so disciplined it was in vain for Peter to contend; but, abandoning Spain for a moment, he had recourse to a more powerful weapon from the same armoury. Edward the Black Prince, then resident at Bourdeaux, was induced by the promise of Biscay to enter Spain as the ally of Castile; and at the great battle of Navarrete, he continued lord of the ascendant over those who had so often already been foiled by his prowess. Du Guesclin was made prisoner; Henry fled to Aragon, and Peter remounted the throne. But a second revolution was at hand: the Black Prince, whom he had ungratefully offended, withdrew into Guienne; and he lost his kingdom and life in a second short contest with his brother.

1367

House of Trastamare.
Henry II. 1368
John I. 1379
Henry III. 1390

A more fortunate period began with the accession of Henry. His own reign was hardly disturbed by any rebellion; and though his successors, John I. and Henry III., were not altogether so unmolested, especially the latter, who ascended the throne in his minority, yet the troubles of their time were slight in comparison with those formerly excited by the houses of Lara and Haro, both of which were now happily extinct. Though Henry II.'s illegitimacy left him no title but popular choice, his queen was sole representative of the Cerdas, the offspring, as has been mentioned above, of Sancho IV.'s elder brother, and, by the extinction of the younger branch, unquestioned heiress of the royal line. Some years afterwards, by the marriage of Henry III. with Catharine, daughter of

persons living when he wrote? There may be a question whether Richard III. smothered his nephews in the Tower; but nobody can dispute that Henry VIII. cut off Anna Bullen's head.

The passage from Matteo Villani above-mentioned is as follows: — Cominciò aspramente a se far ubbidire, perchè temendo de' suoi baroni, trovò modo di far infamare l' uno l' altro, e prendendo cagione, gli cominciò ad uccidere con le sue mani. E in brieve tempo ne fece morire 25, e tre suoi fratelli fece morire, etc.

John of Gaunt and of Constance, an illegitimate child of Peter the Cruel, her pretensions, such as they were, became merged in the crown.

John II.

No kingdom could be worse prepared to meet the disorders of a minority than Castile, and in none did the circumstance so frequently recur. John II. was but fourteen months old at his accession; and but for the disinterestedness of his uncle Ferdinand, the nobility would have been inclined to avert the danger by placing that prince upon the throne. In this instance, however, Castile suffered less from faction, during the infancy of her sovereign, than in his maturity. The queen dowager, at first jointly with Ferdinand, and solely after his accession to the crown of Aragon, administered the government with credit. Fifty years had elapsed, at her death in 1418, since the elevation of the house of Trastamare, who had entitled themselves to public affection by conforming themselves more strictly than their predecessors to the constitutional laws of Castile, which were never so well established as during this period. In external affairs their reigns were not what is considered as glorious. They were generally at peace with Aragon and Granada, but one memorable defeat by the Portuguese at Aljubarrota disgraces the annals of John I., whose cause was as unjust as his arms were unsuccessful. This comparatively golden period ceases at the majority of John II. His reign was filled up by a series of conspiracies and civil wars, headed by his cousins John and Henry, the infants of Aragon, who enjoyed very extensive territories in Castile, by the testament of their father Ferdinand. Their brother the king of Aragon frequently lent the assistance of his arms. John himself, the elder of these two princes, by marriage with the heiress of the kingdom of Navarre, stood in a double relation to Castile, as a neighbouring sovereign, and as a member of the native oligarchy. These conspiracies were all ostensibly directed against the favourite of John II., Alvaro de Luna, who retained for five-and-thirty years an absolute controul over his feeble master. The adverse faction naturally ascribed to this powerful minister every criminal intention and all public mischiefs. He was certainly not more scrupulous than the generality of statesmen, and appears to have been rapacious in accumulating wealth. But there was an energy and courage about Alvaro de Luna, which distinguishes him from the cowardly sycophants who usually rise by the favour of weak princes; and Castile probably would not have been happier under the administration of his enemies. His fate is among the memorable lessons of history. After a life of troubles endured for the sake of this favourite, sometimes a fugitive, sometimes a prisoner, his son heading rebellions against him, John II. suddenly yielded to an intrigue of the palace, and adopted sentiments of dislike towards

1406

1385

Power and fall of Alvaro de Luna.

the man he had so long beloved. No substantial charge appears to have been brought against Alvaro de Luna, except that general malversation which it was too late for the king to object to him. The real cause of John's change of affection was, most probably, the insupportable restraint which the weak are apt to find in that spell of a commanding understanding which they dare not break; the torment of living subject to the ascendant of an inferior, which has produced so many examples of fickleness in sovereigns. That of John II. is not the least conspicuous. Alvaro de Luna was brought to a summary trial and beheaded; his estates were confiscated. He met his death with the intrepidity of Strafford, to whom he seems to have borne some resemblance in character.

Henry IV.

John II. did not long survive his minister, dying in 1454, after a reign that may be considered as inglorious, compared with any except that of his successor. If the father was not respected, the son fell completely into contempt. He had been governed by Pacheco, marquis of Villena, as implicitly as John by Alvaro de Luna. This influence lasted for some time afterwards. But the king inclining to transfer his confidence to the queen Joanna of Portugal, and to one Bertrand de Gueva, upon whom common fame had fixed as her paramour, a powerful confederacy of disaffected nobles was formed against the royal authority. In what degree Henry IV.'s government had been improvident or oppressive towards the people, it is hard to determine. The chiefs of that rebellion, Carillo archbishop of Toledo, the admiral of Castile, a veteran leader of faction, and the marquis of Villena, so lately the king's favourite, were undoubtedly actuated only by selfish ambition and revenge. They deposed Henry in

1465

an assembly of their faction at Avila with a sort of theatrical pageantry which has often been described. But modern historians, struck by the appearance of judicial solemnity in this proceeding, are sometimes apt to speak of it as a national act; while, on the contrary, it seems to have been reprobated by the majority of the Castilians, as an audacious outrage upon a sovereign who, with many defects, had not been guilty of any excessive tyranny. The confederates set up Alfonso, the king's brother, and a civil war of some duration ensued, in which they had the support of Aragon. The queen of Castile had at this time borne a daughter, whom the enemies of Henry IV., and indeed no small part of his adherents, were determined to treat as spurious. Accordingly, after the death of Alfonso, his sister Isabel was considered as heiress of the kingdom. She might have aspired, with the assistance of the confederates, to its immediate possession; but avoiding the odium of a contest with her brother, Isabel agreed to a treaty, by which the succession was absolutely settled upon her.

1469

This arrangement was not long afterwards followed by the union of that princess with Ferdinand, son of

the king of Aragon. This marriage was by no means acceptable to a part of the Castilian oligarchy, who had preferred a connexion with Portugal. And as Henry had never lost sight of the interests of one whom he considered, or pretended to consider, as his daughter, he took the first opportunity of revoking his forced disposition of the crown, and restoring the direct line of succession in favour of the princess Joanna. Upon his death, in 1474, the right was to be decided by arms. Joanna had on her side the common presumptions of law, the testamentary disposition of the late king, the support of Alfonso king of Portugal, to whom she was betrothed, and of several considerable leaders among the nobility, as the young marquis of Villena, the family of Mendoza, and the archbishop of Toledo, who, charging Ferdinand with ingratitude, had quitted a party which he had above all men contributed to strengthen. For Isabella were the general belief of Joanna's illegitimacy, the assistance of Aragon, the adherence of a majority both among the nobles and people, and, more than all, the reputation of ability which both she and her husband had deservedly acquired. The scale was however pretty equally balanced, till the king of Portugal having been defeated at Toro, in 1476, Joanna's party discovered their inability to prosecute the war by themselves, and successively made their submission to Ferdinand and Isabella.

Constitution of Castile.

Succession of the crown.

The Castilians always considered themselves as subject to a legal and limited monarchy. For several ages, the crown was elective, as in most nations of German origin, within the limits of one royal family (1). In general, of course, the public choice fell upon the nearest heir; and it became a prevailing usage to elect a son during the lifetime of his father; till, about the eleventh century, a right of hereditary succession was clearly established. But the form of recognizing the heir apparent's title in an assembly of the cortes, has subsisted until our own time (2).

National councils.

In the original Gothic monarchy of Spain, civil as well as ecclesiastical affairs were decided in national councils, the acts of many of which are still extant, and have been published in ecclesiastical collections. To these assemblies the dukes, and other provincial governors, and in general the principal individuals of the realm, were summoned along with spiritual persons. This double aristocracy of church and state continued to form the great council of advice and consent in the first ages of

(1) Defuncto in pace principe, primates totius regni unà cum sacerdotibus successorem regni concilio communi constituant. Concil. Toletan. IV. c. 75. apud Marina, Teoria de las Cortes, tit. ii. p. 2. This important work, by the author of the Ensayo Historico-Critico, quoted above, contains an ample digest of the parliamentary law of Castile, drawn from original and, in a great degree, unpublished records. I have been favoured with the use of a copy, from which I am the more disposed to make extracts, as the book is likely, through its liberal principles, to become almost as scarce in Spain as in England. Marina's former work (the Ensayo Hist. Crit.) furnishes a series of testimonies (c. 66.) to the elective character of the monarchy from Pelayo downwards to the twelfth century.

(2) Teoria de las Cortes, t. ii. p. 7.

the new kingdoms of Leon and Castile. The prelates and nobility, or rather some of the more distinguished nobility, appear to have concurred in all general measures of legislation, as we infer from the preamble of their statutes. It would be against analogy, as well as without evidence, to suppose that any representation of the commons had been formed in the earlier period of the monarchy. In the preamble of laws passed in 1020, and at several subsequent times during that and the ensuing century, we find only the bishops and magnats recited as present. According to the General Chronicle of Spain, deputies from the Castilian towns formed a part of cortes in 1169; a date not to be rejected as incompatible with their absence in 1178. However, in 1188, the first year of the reign of Alfonso IX., they are expressly mentioned, and from that æra were constant and necessary parts of those general assemblies (1). It has been seen already, that the corporate towns, or districts of Castile, had early acquired considerable importance; arising less from commercial wealth, to which the towns of other kingdoms were indebted for their liberties, than from their utility in keeping up a military organization among the people. To this they probably owe their early reception into the cortes, as integrant portions of the legislature, since we do not read that taxes were frequently demanded, till the extravagance of later kings and their alienation of the domain, compelled them to have recourse to the national representatives.

Admission of deputies from towns.

Every chief town of a consejo or corporation ought, perhaps, by the constitution of Castile, to have received its regular writ for the election of deputies to cortes (2). But there does not appear to have been, in the best times, any uniform practice in this respect. At the cortes of Burgos, in 1315, we find one hundred and ninety-two representatives from more than ninety towns; at those of Madrid, in 1391, one hundred and twenty-six were sent from fifty towns; and the latter list contains names of several places which do not appear in the former (3). No deputies were present from the kingdom of Leon in the cortes of Alcala in 1348, where, among many important enactments, the code of the Siete Partidas first obtained a legislative recognition (4). We find, in short, a good deal more irregularity than during the same period in England, where the number of electing boroughs varied pretty considerably at every parliament. Yet the cortes of Castile did not cease to be a numerous body and a fair representation of the people till the reign of John II. The first princes of the house of Trastamare

(1) Ensayo Hist. Crit. p. 77. Teoria de las Cortes, t. i. p. 66. Marina seems to have somewhat changed his opinion since the publication of the former work, where he inclines to assert, that the commons were from the earliest times admitted into the legislature. In 1183, the first year of the reign of Alfonso IX., we find positive mention of la muchedumbre de las cibdades é embiados de cada cibdad.

(2) Teoria de las Cortes, p. 139.

(3) Idem, p. 148. Geddes gives a list of one hundred and twenty-seven deputies from forty-eight towns to the cortes at Madrid in 1390. Miscellaneous Tracts, vol. iii.

(4) Teoria de las Cortes, p. 154.

had acted in all points with the advice of their cortes. But John II., and still more his son Henry IV., being conscious of their own unpopularity, did not venture to meet a full assembly of the nation. Their writs were directed only to certain towns; an abuse for which the looseness of preceding usage had given a pretence (1). It must be owned that the people bore it in general very patiently. Many of the corporate towns, impoverished by civil warfare and other causes, were glad to save the cost of defraying their deputies' expenses. Thus, by the year 1480, only seventeen cities had retained privilege of representation. A vote was afterwards added for Granada, and three more in later times for Palencia, and the provinces of Estremadura and Galicia (2). It might have been easy perhaps to redress this grievance, while the exclusion was yet fresh and recent. But the privileged towns, with a mean and preposterous selfishness, although their zeal for liberty was at its height, could not endure the only means of effectually securing it, by a restoration of elective franchises to their fellow citizens. The cortes of 1506 assert with one of those bold falsifications upon which a popular body sometimes ventures, that "it is established by some laws and by immemorial usage that eighteen cities of these kingdoms have the right of sending deputies to cortes; and no more;" remonstrating against the attempts made by some other towns to obtain the same privilege, which they request may not be conceded. This remonstrance is repeated in 1512 (3).

From the reign of Alfonso XI., who restrained the government of corporations to an oligarchy of magistrates, the right of electing members of cortes was confined to the ruling body, the bailiffs or regidores, whose number seldom exceeded twenty-four, and whose succession was kept up by close election among themselves (4). The people therefore had no direct share in the choice of representatives. Experience proved, as several instances in these pages will shew, that even upon this narrow basis, the deputies of Castile were not deficient in zeal for their country and its liberties. But it must be confessed, that a small body of electors is always liable to corrupt influence and to intimidation. John II. and Henry IV. often invaded the freedom of election; the latter even named some of the deputies (5). Several energetic remonstrances were made in cortes against this flagrant grievance. Laws were enacted and other precautions devised to secure the due return of deputies. In

(1) Sepades, (says John II. in 1442.) que en el ayuntamento qué yo fice en la noble villa de Valladolid....los procuradores de ciertas cibdades é villas de mis reynos que por mi mandado fueron llamados. This language is repeated as to subsequent meetings. p. 156.

(2) The cities which retain their representation in cortes, if the present tense may still be used even for these ghosts of ancient liberty in Spain, are Burgos, Toledo, (there was a constant dispute for precedence between these two,) Leon, Granada, Cordova, Murcia, Jaen, Zamora, Toro, Soria, Valladolid, Salamanca, Segovia, Avila, Madrid, Guadalaxara, and Cuenca. The representatives of these were supposed to vote not only for their immediate constituents, but for other adjacent towns. Thus Toro voted for Palencia and the kingdom of Galicia, before they obtained separate votes; Salamanca for most of Estremadura; Guadalaxara for Siguenza and four hundred other towns. Teoria de las Cortes, p. 160. 268.

(3) Idem, p. 161.

(4) Idem, p. 86, 197.

(5) Idem, p. 199.

the sixteenth century, the evil of course was aggravated.. Charles and Philip corrupted the members by bribery (1). Even in 1573 the cortes are bold enough to complain, that creatures of government were sent thither, "who are always held for suspected by the other deputies, and cause disagreement among them (2)."

Spiritual and temporal nobility in cortes.

There seems to be a considerable obscurity about the constitution of the cortes, so far as relates to the two higher estates, the spiritual and temporal nobility. It is admitted that down to the latter part of the thirteenth century, and especially before the introduction of representatives from the commons, they were summoned in considerable numbers. But the writer, to whom I must almost exclusively refer for the constitutional history of Castile, contends, that from the reign of Sancho IV., they took much less share, and retained much less influence, in the deliberations of cortes (3). There is a remarkable protest of the archbishop of Toledo in 1295, against the acts done in cortes, because neither he nor the other prelates had been admitted to their discussions, nor given any consent to their resolutions, although such consent was falsely recited in the laws enacted therein (4). This protestation is at least a testimony to the constitutional rights of the prelacy, which indeed all the early history of Castile, as well as the analogy of other governments, conspires to demonstrate. In the fourteenth and fifteenth centuries, however, they were more and more excluded. None of the prelates were summoned to the cortes of 1299 and 1301; none either of the prelates or nobles to those of 1370 and 1373, of 1480 and 1505. In all the latter cases, indeed, such members of both orders as happened to be present in the court attended the cortes; a fact which seems to be established by the language of the statutes (5). Other instances of a similar kind may be adduced. Nevertheless, the more usual expression in the preamble of laws reciting those summoned to, and present at the cortes, though subject to considerable variation, seems to imply that all the three estates were, at least nominally and according to legitimate forms, constituent members of the national assembly. And a chronical mentions, under the year 1406, the nobility and clergy as deliberating separately, and with some difference of judgment, from the deputies of the commons (6). A theory, indeed, which should exclude the great

(1) Teoria de las Cortes, p. 213.
(2) Idem, p. 202.
(3) Idem, p. 67.
(4) Protestamos que desde aqui venimos non fuemos llamados a consejo, ni a los tratados sobre los fechos del reyno, ni sobro las otras cosas que hi fueren tractadas et fechas, et senaladamente sobre los fechos de los consejos de las hermandades, et de las petitiones que fueron fechas de su parte, et sobre los otorgamentos que les ficieron, et sobre los privilegios que por esta nazon les fueron otorgados; mas ente fuemos onde apartados et estrannados et secados expresamente nos et los otros perlados et ricos homes et los fijosdalgo; et non fue hi cosa fecha con nuestro consejo. Otrosi protestamos por razon de aquello que dice en los previlegios que les otorgaron, que fueren los perlados llamados, et que eran otorgados de consentimiento et de voluntad dellos, que nos fuemos hi presentes ni llamados nin fué fecho con nuestra voluntad, nin consentiemos, nin consentimos en ellos, etc. p. 72.
(5) Teoria de las Cortes, p. 74.
(6) T. ii. p. 234. Marina is influenced by a prejudice in favour of the abortive Spanish constitution of 1812, which excluded the temporal and spi-

territorial aristocracy from their place in cortes, would expose the dignity and legislative rights of that body to unfavourable inferences. But it is manifest, that the king exercised very freely a prerogative of calling or omitting persons of both the higher orders at his discretion. The bishops were numerous, and many of their sees not rich; while the same objections of inconvenience applied perhaps to the ricos hombres, but far more forcibly to the lower nobility, the hijosdalgo or caballeros. Castile never adopted the institution of deputies from this order, as in the States General of France and some other countries; much less that liberal system of landed representation, which forms one of the most admirable peculiarities in our own constitution. It will be seen hereafter, that spiritual and even temporal peers were summoned by our kings with much irregularity; and the disordered state of Castile through almost every reign was likely to prevent the establishment of any fixed usage in this and most other points.

Right of taxation.

The primary and most essential characteristic of a limited monarchy is that money can only be levied upon the people through the consent of their representatives. This principle was thoroughly established in Castile; and the statutes which enforce it, the remonstrances which protest against its violation, bear a lively analogy to corresponding circumstances in the history of our constitution. The lands of the nobility and clergy were, I believe, always exempted from direct taxation; an immunity which perhaps rendered the attendance of the members of those estates in the cortes less regular. The corporate districts or consejos, which, as I have observed already, differed from the communities of France and England by possessing a large extent of territory, subordinate to the principal town, were bound by their charter to a stipulated annual payment, the price of their franchises, called moneda forera (1). Beyond this sum nothing could

ritual aristocracy from a place in the legislature, to imagine a similar form of government in ancient times. But his own work furnishes abundant reasons, if I am not mistaken, to modify this opinion very essentially. A few out of many instances may be adduced from the enacting words of statutes, which we consider in England as good evidences to establish a constitutional theory. Sepades que yo hobé mio acuerdo e mio consejo con mios hermanos e los arzobispos, e los obispos, e con los ricos homes de Castella, e de Leon, e con homes buenos de las villas de Castella, e de Leon, que fueron conmigo en Valladolit, sobre muchas cosas, etc. (Alfonso X. in 1258.) Mandamos enviar llamar por cartas del rei e nuestras a los infantes e perlados e ricos homes e infanzones e caballeros e homes buenos de las cibdades e de las villas de los reynos de Castilla e de Toledo e de Leon e de las Estramaduras, e de Gallicia et de las Asturias e del Andalusia: (Writ of summons to cortes of Burgos in 1315.) Con acuerdo de los perlados e de los ricos homes e procuradores de las cibdades è villas é logares de los nuestros reynos: (Ordinances of Toro in 1371.) Estando hi con él el infantes Don Ferrando, etc., e otros perlados e condes e ricos homes è otros del consejo del señor rei, e otros caballeros e escuderos, e los procuradores de las cibdades e villas e logares de sus reynos: (Cortes of 1391.) Los tres estados que deben venir a las cortes e ayuntamientos segun se debe facer e es de buena costumbre antigua: (Cortes of 1393.) This last passage is apparently conclusive to prove, that three estates, the superior clergy, the nobility, and the commons, were essential members of the legislature in Castile, as they were in France and England; and one is astonished to read in Marina, that no faltaron a ninguna de las formalidades de derecho los monarchas que no tuvieron por oportuno llamar à cortes para semejantes actos ni al clero ni à la nobleza ni à las personas singulares de uno y otro estado. t. i. p. 69. That great citizen, Jovellanos, appears to have had much wiser notions of the ancient government of his country, as well as of the sort of reformation which she wanted: as we may infer from passages in his Memoria à sus compatriotas, Coruna, 1811, quoted by Marina for the purpose of censure.

(1) Marina, Ensayo Hist. Crit. cap. 188. Teoria de las Cortes, t. ii. p. 367. This is expressed in

be demanded without the consent of the cortes. Alfonso VIII., in 1177, applied for a subsidy towards carrying on the siege of Cuenca. Demands of money do not however seem to have been very usual before the prodigal reign of Alfonso X. That prince and his immediate successors were not much inclined to respect the rights of their subjects; but they encountered a steady and insuperable resistance. Ferdinand IV., in 1307, promises to raise no money beyond his legal and customary dues. A more explicit law was enacted by Alfonso XI., in 1328, who bound himself not to exact from his people, or cause them to pay any tax, either partial or general, not hitherto established by law, without the previous grant of all the deputies convened to the cortes (1). This abolition of illegal impositions was several times confirmed by the same prince. The cortes, in 1393, having made a grant to Henry III., annexed this condition, that "since they had granted him enough for his present necessities, and even to lay up a part for a future exigency, he should swear before one of the archbishops not to take or demand any money, service, or loan, or any thing else of the cities and towns, nor of individuals belonging to them, on any pretence of necessity, until the three estates of the kingdom should first be duly summoned and assembled in cortes according to ancient usage. And if any such letters requiring money have been written, that they shall be *obeyed, and not complied with* (2)." His son John II. having violated this constitutional privilege on the allegation of a pressing necessity, the cortes, in 1420, presented a long remonstrance couched in very respectful, but equally firm language, wherein they assert, "the good custom founded in reason and in justice, that the cities and towns of your kingdoms shall not be compelled to pay taxes or requisitions or other new tribute, unless your highness order it by advice and with the grant of the said cities and towns, and of their deputies for them." And they express their apprehension lest this right should be infringed, because, as they say, "there remains no other privilege or liberty which can be profitable to subjects, if this be shaken (3)." The king gave them as full satisfaction as they desired, that his encroachment should not be drawn into precedent. Some fresh abuses, during the unfortunate reign of Henry IV., produced another declaration

one of their fueros, or charters: Liberi et ingenui semper maneatis, reddendo mihi et successoribus meis in unoquoque anno in die Pentecostes de unaquaque domo 12 denarios; et, nisi cum bonâ voluntate vestrâ feceritis, nullum alium servitium faciatis.

(1) De los con echar nin mandar pagar pecho desaforado ninguno, especial nin general, en toda mi tierra, sin ser llamados primeramente a cortes, e otorgado por todos los procuradores que his venieren. p. 388.

(2) Obedecidas e non cumplidas. This expression occurs frequently in provisions made against illegal acts of the crown, and is characteristic of the singular respect with which the Spaniards always thought it right to treat their sovereign, while they were resisting the abuses of his authority.

(3) La buena costumbre e possession fundada an razon e en justicia que las cibdades e villas de vuestros reinos tenian de no ser mandado coger monedas e pedidos nin otro tributo nuevo alguno en los vuestros reinos, sin que la vuestra senoria lo faga e ordene de consejo e con otorgamiento de las cibdades e villas de los vuestros reinos e de sus procuradores en su nombre **** no queda otro previlegio ni libertad de que los subditos puedan gozar ni aprovechar quebrantado el sobredicho. t. iii. p. 30.

in equally explicit language; forming part of the sentence awarded by the arbitrators to whom the differences between the king and his people had been referred at Medina del Campo in 1465 (1). The catholic kings, as they are eminently called, Ferdinand and Isabella, never violated this part of the constitution; nor did even Charles I., although sometimes refused money by the cortes, attempt to exact it without their consent (2). In the Recopilacion, or code of Castilian law, published by Philip II., we read a positive declaration against arbitrary imposition of taxes, which remained unaltered on the face of the statute-book till the present age (3). The law was indeed frequently broken by Philip II.; but the cortes, who retained throughout the sixteenth century a degree of steadiness and courage truly admirable, when we consider their political weakness, did not cease to remonstrate with that suspicious tyrant, and recorded their unavailing appeal to the law of Alfonso XI., "so ancient and just, and which so long time has been used and observed (4)."

Control of cortes over expenditure.

The free assent of the people by their representatives to grants of money was by no means a mere matter of form. It was connected with other essential rights, indispensable to its effectual exercise; those of examining public accounts and checking the expenditure. The cortes, in the best times at least, were careful to grant no money, until they were assured that what had been already levied on their constituents had been properly employed (5). They refused a subsidy in 1390, because they had already given so much, and "not knowing how so great a sum had been expended, it would be a great dishonour and mischief to promise any more." In 1406 they stood out a long time, and at length gave only half of what was demanded (6). Charles I. attempted to obtain money, in 1527, from the nobility, as well as commons. But the former protested, that "their obligation was to follow the king in war, wherefore to contribute money was totally against their privilege, and for that reason they

(1) Declaramos e ordenamos, que el dicho senor rei nin los otros reyes que despues del fueren non echan nin repartan nin pidan pedidos nin monedas en sus reynos, salvo por gran necessidad, e seyendo primero accordado con los perlados e grandes de sus reynos, e con los otros que a la sazon residieren en su consejo, e seyendo para ello llamados los procuradores de las cibdades e villas de sus reynos, que para las tales cosas se suelen e acostumbran llamar, e seyendo per los dichos procuradores otorgado el dicho pedimento e monedas. t. ii. p. 301.

(2) Marina has published two letters from Charles to the city of Toledo, in 1542 and 1548, requesting them to instruct their deputies to consent to a further grant of money, which they had refused to do without leave of their constituents. t. iii. p. 180. 187.

(3) T. ii. p. 393.

(4) En las cortes de ano de 70 y en las de 76 dedimos a v. m. fuese servido de no poner nuevos impuestos, rentas, pechos, ni derechos ni otros tributos particulares ni generales sin junta del reyno en cortes, como està dispuesto por lei del senor rei Don Alonso, y se significò a v. m. el dano grande que con las nuevas rentas habia recibido el reino, supplicando a v. m. fuese servido de mandarle aliviar y descargar, y que en lo de adelante se les hiciese merced de guardar las dichas leyes reales y que no se impusiessen nuevas rentas sin su asistencia; pues podria v. m. estar satisfecho de que el reino sirve en las cosas necessarias con toda lealtad y hasta ahora no se ha proveido lo susodicho; y el reino por la obligacion que tiene a pedir a v. m. guarde la dicha lei, y que no solamente han cessado las necessidades de los subditos y naturales de v. m. pero antes cscecen de cada dia: vuelve a suplicar a v. m. sea servido concederle lo susodicho, y que las nuevas rentas, pechos y derechos se quiten, y que de aqui adelante se guarde la dicha lei del senor rei don Alonso, como tan antigua y justa y que tanto tiempo se usò y guardò.—p. 395. This petition was in 1879.

(5) Marina, t. ii. p. 404. 406.

(6) P. 409.

could not acquiesce in his majesty's request (1)." The commons also refused upon this occasion. In 1538, on a similar proposition, the superior and lower nobility (los grandes y caballeros) "begged will all humility that they might never hear any more of that matter (2)."

The contributions granted by cortes were assessed and collected by respectable individuals (hombres buenos) of the several towns and villages (3). This *repartition*, as the French call it, of direct taxes, is a matter of the highest importance in those countries where they are imposed by means of a gross assessment on a district. The produce was paid to the royal council. It could not be applied to any other purpose than that to which the tax had been appropriated. Thus the cortes of Segovia, in 1407, granted a subsidy for the war against Granada, on condition "that it should not be laid out on any other service except this war;" which they requested the queen and Ferdinand, both regents in John II.'s minority, to confirm by oath. Part, however, of the money remained unexpended, Ferdinand wished to apply it to his own object of procuring the crown of Aragon; but the queen first obtained not only a release from her oath by the pope, but the consent of the cortes. They continued to insist upon this appropriation, though ineffectually, under the reign of Charles I. (4).

The cortes did not consider it beyond the line of their duty, notwithstanding the respectful manner in which they always addressed the sovereign, to remonstrate against profuse expenditure even in his own household. They told Alfonso X. in 1258, in the homely style of that age, that they thought it fitting that the king and his wife should eat at the rate of a hundred and fifty maravedis a day, and no more; and that the king should order his attendants to eat more moderately than they did (5). They remonstrated more forcibly against the prodigality of John II. Even in 1559, they spoke with an undaunted Castilian spirit to Philip II. "Sir, the expenses of your royal establishment and household are much increased; and we conceive it would much redound to the good of these kingdoms, that your majesty should direct them to be lowered, both as a relief to your wants, and that all the great men and other subjects of your majesty may take example therefrom, to restrain the great disorder and excess they commit in that respect (6)."

Forms of the cortes.

The forms of Castilian cortes were analogous to those of an English parliament in the fourteenth century.

(1) Pero que contribuir a la guerra con ciertas sumas era totalmente opuesto à sus privilegios, e asi que no podrian acomodarse à lo que s. m. deseaba. Marina, t. ii. p. 411.

(2) Idem, ibid.

(3) P. 396.

(4) P. 412.

(5) P. 417.

(6) Señor, los gastos de vuestro real estado y mesa son muy crescidos, y entendemos que convenria mucho al bien de estos reinos que v. m. los mandasse moderar asi para algun remedio de sus necessidades como para que de v. m. tomen egemplo todos los grandes y caballeros y otros subditos de v. m. en la gran desarden y excessos que hacen en las cosas sobredichas.—p. 437.

They were summoned by a writ almost exactly coincident in expression with that in use among us (1). The session was opened by a speech from the chancellor or other chief officer of the court. The deputies were invited to consider certain special business, and commonly to grant money (2). After the principal affairs were dispatched, they conferred together, and having examined the instructions of their respective constituents, drew up a schedule of petitions. These were duly answered one by one, and from the petition and answer, if favourable, laws were afterwards drawn up, where the matter required a new law, or promises of redress were given, if the petition related to an abuse or grievance. In the struggling condition of Spanish liberty under Charles I., the crown began to neglect answering the petitions of cortes, or to use unsatisfactory generalities of expression. This gave rise to many remonstrances. The deputies insisted, in 1523, on having answers before they granted money. They repeated the same contention in 1525, and obtained a general law, inserted in the Recopilacion, enacting that the king should answer all their petitions before he dissolved the assembly (3). This however was disregarded as before; but the cortes, whose intrepid honesty under Philip II. so often attracts our admiration, continued, as late as 1586, to appeal to the written statute, and lament its violation (4).

Right of cortes in legislation.

According to the ancient fundamental constitution of Castile, the king did not legislate for his subjects without their consent. The code of the Visigoths, called in Spain the Fuero Juzgo, was enacted in public councils, as were also the laws of the early kings of Leon, which appears by the reciting words of their preambles (5). This consent was originally given only by the higher estates, who might be considered, in a large sense, as representing the nation, though not chosen by it; but from the end of the twelfth century, by the elected deputies of the commons in cortes. The laws of Alfonso X. in 1258, those of the same prince in 1274, and many others in subsequent times, are declared to be made with the consent (con acuerdo) of the several orders of the kingdom. More commonly indeed, the preamble of Castilian statutes only recites their advice (consejo); but I do not know that any stress is to be laid on this circumstance. The laws of the Siete Partidas, compiled by Alfonso X., did not obtain any direct sanction till the famous cortes of Alcala in 1348, when they were confirmed along with several others, forming altogether the basis of the statute-law of Spain (6). Whether they were in fact received before that time,

(1) Marina, t. i. p. 175.; t. iii. p. 103.
(2) T. i. p. 278.
(3) P. 301.
(4) P. 288—304.
(5) T. ii. p. 202. The acts of the cortes of Leon in 1020 run thus: Omnes pontifices et abbates et optimates regni Hispaniæ jussu ipsius regis talia decreta decrevimus quæ firmiter teneantur futuris temporibus. So those of Salamanca in 1178: Ego rex Fernandus inter cætera quæ cum episcopis et abbatibus regni nostri et quamplurimis aliis religiosis, cum comitibus terrarum et principibus et rectoribus provinciarum, toto posse tenenda statuimus apud Salamancam.
(6) Ensayo Hist. Crit. p. 353. Teoria de las Cortes, t. ii. p. 77. Marina seems to have changed his

has been a matter controverted among Spanish antiquaries; and upon the question of their legal validity at the time of their promulgation, depends an important point in Castilian history, the disputed right of succession between Sancho IV. and the infants of la Cerda; the former claiming under the ancient customary law, the latter under the new dispositions of the Siete Partidas. If the king could not legally change the established laws without consent of his cortes, as seems most probable, the right of representative succession did not exist in favour of his grand-children, and Sancho IV. cannot be considered as an usurper.

It appears upon the whole to have been a constitutional principle, that laws could neither be made nor annulled except in cortes. In 1506, this is claimed by the deputies as an established right (1). John the First had long before admitted, that what was done by cortes and general assemblies could not be undone by letters missive, but by such cortes and assemblies alone (2). For the kings of Castile had adopted the English practice of dispensing with statutes by a non obstante clause in their grants. But the cortes remonstrated more steadily against this abuse than our own parliament, who suffered it to remain in a certain degree till the revolution. It was several times enacted upon their petition, especially by an explicit statute of Henry II., that grants and letters patent dispensing with statutes should not be obeyed (3). Nevertheless John II., trusting to force or the servility of the judges, had the assurance to dispense explicitly with this very law (4). The cortes of Valladolid, in 1442, obtained fresh promises and enactments against such an abuse. Philip I. and Charles I. began to legislate without asking the consent of cortes; this grew much worse under Philip II., and reached its height under his successors, who entirely abolished all constitutional privileges (5). In 1555, we find a petition that laws made in cortes should be revoked nowhere else. The reply was such as became that age: "To this we answer, that we shall do what best suits our government." But even in 1619, and still afterwards, the patriot representatives of Castile continued to lift an unavailing voice against illegal ordinances, though in the form of very humble petition; perhaps the latest testimonies to the expiring liberties of their country (6). The denial of exclusive legislative authority to the crown must, however, be understood to admit the legality of particular ordinances, designed to strengthen the king's executive government (7). These,

opinion between the publication of these two works, in the former of which he contends for the previous authority of the Siete Partidas, and in favour of the infants of la Cerda.

(1) Los reyes establecieron que cuando hubiessen de hacer leyes, para que fuessen provechosas à sus reynos y cada provincias fuesen proveidas, se llamasen cortes y procuradores que entendiesen en ellas, y por esto se establecio lei que no se hiciesen ni renovasen leyes sino en cortes. Teoria de las Cortes, t. ii. p. 218.

(2) Lo que es ferho por cortes é por ayuntamientos que non se pueda disfacer por las tales cartas, salvo por ayuntamientos è cortes. p. 215.

(3) P. 215.

(4) P. 216.; t. iii. p. 40.

(5) T. ii. p. 218.

(6) Ha suplicado el reino à v. m. no se promulguen nuevas leyes, ni en todo ni en parte las antiguas se alteren sin que sea por cortes.....y por ser de tanta importancia vuelve el reino à suplicarlo humildemente à v. m.—p. 220.

(7) P. 207.

no doubt, like the royal proclamations in England, extended sometimes very far, and subjected the people to a sort of arbitrary coercion much beyond what our enlightened notions of freedom would consider as reconcileable to it. But in the middle ages, such temporary commands and prohibitions were not reckoned strictly legislative, and passed, perhaps rightly, for inevitable consequences of a scanty code, and short sessions of the national council.

The kings were obliged to swear to the observance of laws enacted in cortes, besides their general coronation oath to keep the laws and preserve the liberties of their people. Of this we find several instances from the middle of the thirteenth century; and the practice continued till the time of John II., who, in 1433, on being requested to swear to the laws then enacted, answered, that he intended to maintain them, and consequently no oath was necessary; an evasion, in which the cortes seen unaccountably to have acquiesced (1). The guardians of Alfonso XI. not only swore to observe all that had been agreed on at Burgos in 1315, but consented that if any one of them did not keep his oath, the people should no longer be obliged to regard or obey him as regent (2).

Other rights of the cortes.

It was customary to assemble the cortes of Castile for many purposes, besides those of granting money and concurring in legislation. They were summoned in every reign to acknowledge and confirm the succession of the heir apparent, and upon his accession to swear allegiance (3). These acts were however little more than formal, and accordingly have been preserved for the sake of parade, after all the real dignity of the cortes was annihilated. In the fourteenth and fifteenth centuries, they claimed and exercised far more ample powers than our own parliament ever enjoyed. They assumed the right, when questions of regency occurred, to limit the prerogative, as well as to designate the persons who were to use it (4). And the frequent minorities of Castilian kings, which were unfavourable enough to tranquillity and subordination, served to confirm these parliamentary privileges. The cortes were usually consulted upon all material business. A law of Alfonso XI., in 1328, printed in the Recopilacion or code published by Philip II., declares, "Since in the arduous affairs of our kingdom, the counsel of our natural subjects is necessary, especially of the deputies from our cities and towns, therefore we ordain and command that on such great occasions the cortes shall be assembled, and counsel shall be taken of the three estates of our kingdoms, as the kings our forefathers have been used to do (5)." A cortes of John II., in 1419, claimed this right of being consulted in all matters of importance, with a warm remonstrance against the alleged violation of so wholesome a law by the reigning prince;

(1) Teoria de las Cortes, t. i. p. 306.
(2) T. iii. p. 62.
(3) T. i. p. 33.; t. ii. p. 24.
(4) Teoria de las Cortes, p. 230.
(5) T. i. p. 31.

who answered that in weighty matters he had acted, and would continue to act, in conformity to it (1). What should be intended by great and weighty affairs, might be not at all agreed upon by the two parties; to each of whose interpretations these words gave pretty full scope. However, the current usage of the monarchy certainly permitted much authority in public deliberation to the cortes. Among other instances, which indeed will continually be found in the common civil histories, the cortes of Orcano, in 1469, remonstrate with Henry IV. for allying himself with England rather than France, and give, as the first reason of complaint, that "according to the laws of your kingdom, when the kings have any thing of great importance in hand, they ought not to undertake it without advice and knowledge of the chief towns and cities of your kingdom (2)." This privilege of general interference was asserted, like other ancient rights, under Charles, whom they strongly urged, in 1548, not to permit his son Philip to depart out of the realm (3). It is hardly necessary to observe, that in such times they had little chance of being regarded.

Council of Castile.

The kings of Leon and Castile acted, during the interval of the cortes, by the advice of a smaller council, answering, as it seems, almost exactly to the king's ordinary council in England. In early ages, before the introduction of the commons, it is sometimes difficult to distinguish this body from the general council of the nation; being composed, in fact, of the same class of persons, though in smaller numbers. A similar difficulty applies to the English history. The nature of their proceedings seems best to ascertain the distinction. All executive acts, including those ordinances which may appear rather of a legislative nature, all grants and charters, are declared to be with the assent of the court (curia), or of the magnats of the palace, or of the chiefs or nobles (4). This privy council was an essential part of all European monarchies. And, though the sovereign might be considered as free to call in the advice of whomsoever he pleased, yet, in fact, the princes of the blood and most powerful nobility had anciently a constitutional right to be members of such a council; so that it formed a very material check upon his personal authority.

The council underwent several changes in progress of time, which it is not necessary to enumerate. It was justly deemed an important member of the constitution, and the cortes shewed a laudable anxiety to procure its composition in such a manner as to form a guarantee for the due execution of laws after their own dissolution. Several times, especially in minorities, they even

(1) Teoria de las Cortes, p. 34.

(2) Porque, segunt leyes de vuestros reynos, cuando los reyes han de facer alguna cosa de gran importancia, non lo deben facer sin consejo é sabiduria de las cibdades é villas principales de vuestros reynos. Idem, t. ii. p. 241.

(3) T. iii. p. 183.

(4) Cum assensu magnatum palatii: Cum consilio curiæ meæ: Cum consilio et beneplacito omnium principum meorum, nullo contradicente nec reclamante. p. 325.

named its members, or a part of them; and in the reigns of Henry III. and John II., they obtained the privilege of adding a permanent deputation, consisting of four persons elected out of their own body, annexed as it were to the council, who were to continue at the court during the interval of cortes, and watch over the due observance of the laws (1). This deputation continued, as an empty formality, in the sixteenth century. In the council the king was bound to sit personally three days in the week. Their business, which included the whole executive government, was distributed with considerable accuracy into what might be dispatched by the council alone, under their own seals and signatures, and what required the royal seal (2). The consent of this body was necessary for almost every act of the crown, for pensions or grants of money, ecclesiastical and political promotions, and for charters of pardon, the easy concession of which was a great encouragement to the homicides so usual in these ages, and was restrained by some of our own laws (3). But the council did not exercise any judicial authority, if we may believe the well-informed author, from whom I have learned these particulars; unlike, in this, to the ordinary council of the kings of England. It was not until the days of Ferdinand and Isabella, that this, among other innovations, was introduced (4).

Administration of justice.

Civil and criminal justice was administered, in the first instance, by the alcaldes, or municipal judges of towns; elected within themselves, originally, by the community at large, but, in subsequent times, by the governing body. In other places, a lord possessed the right of jurisdiction, by grant from the crown, not, what we find in countries where the feudal system was more thoroughly established, as incident to his own territorial superiority. The kings, however, began in the thirteenth century to appoint judges of their own, called corrigeridores, a name which seems to express concurrent jurisdiction with the regidores, or ordinary magistrates (5). The cortes frequently remonstrated against this encroachment. Alfonso XI. consented to withdraw his judges from all corporations by which he had not been requested to appoint them (6). Some attempts to interfere with the municipal authorities of Toledo produced serious disturbances under Henry III. and John II. (7). Even where the king appointed magistrates at a city's request, he was bound to select them from among the citizens (8). From this immediate jurisdiction, an appeal lay to the adelantado, or governor of the province, and from thence to the tribunal of royal alcaldes (9). The latter,

(1) Teoria de las Cortes, t. ii. p. 246.
(2) P. 354.
(3) P. 360. 362. 372.
(4) P. 375. 379.
(5) Alfonso X. says: Ningun ome sea osado juzgar pleytos, se no fuere alcalde puesto por el rey. id. fol. 27. This seems an encroachment on the municipal magistrates.
(6) Teoria de las Cortes, t. ii. p. 261.
(7) P. 235. Mariana, l. xx. c. 13.
(8) P. 255.
(9) P. 266.

however, could not take cognizance of any cause depending before the ordinary judges; a contrast to the practice of Aragon, where the justiciary's right of evocation (juris firma) was considered as a principal safeguard of public liberty (1). As a court of appeal, the royal alcaldes had the supreme jurisdiction. The king could only cause their sentence to be revised, but neither alter nor revoke it (2). They have continued to the present day as a criminal tribunal; but civil appeals were transferred by the ordinances of Toro in 1371 to a new court, styled the king's audience, which, though deprived under Ferdinand and his successors of part of its jurisdiction, still remains one of the principal judicatures in Castile (3).

Violent actions of some kings of Castile.

No people in a half-civilized state of society have a full practical security against particular acts of arbitrary power. They were more common perhaps in Castile than in any other European monarchy, which professed to be free. Laws indeed were not wanting to protect men's lives and liberties, as well as their properties. Ferdinand IV., in 1299, agreed to a petition that "justice shall be executed impartially according to law and right; and that no one shall be put to death or imprisoned, or deprived of his possessions without trial, and that this be better observed than heretofore (4)." He renewed the same law in 1307. Nevertheless, the most remarkable circumstance of this monarch's history was a violation of so sacred and apparently so well established a law. Two gentlemen having been accused of murder, Ferdinand, without waiting for any process, ordered them to instant execution. They summoned him with their last words to appear before the tribunal of God in thirty days; and his death within the time, which has given him the sirname of the Summoned, might, we may hope, deter succeeding sovereigns from iniquity so flagrant. But from the practice of causing their enemies to be assassinated, neither law nor conscience could withhold them. Alfonso XI. was more than once guilty of this crime. Yet he too passed an ordinance in 1325 that no warrant should issue for putting any one to death, or seizing his property, till he should be duly tried by course of law. Henry II. repeats the same law in very explicit language (5). But the civil history of Spain displays several violations of it. An extraordinary prerogative of committing murder appears to have been admitted, in early times, by several nations who did not acknowledge unlimited power in their

(1) Teoria de las Cortes, t. ii. p. 260.

(2) P. 287. 304.

(3) T. ii. p. 292—302.

(4) Que mandase facer la justicia en aquellos que la merecen comunalmente con fuero é con derecho; é los homes que non sean muertos nin presos nin tomados lo que han sin ser oidos por derecho ó por fuero de aquel logar do acaesciere, é que sea guardado mejor que se guardo fasta aqui. Marina, Ensayo Hist. Critico, p. 148.

(5) Que non mandemos matar nin prender nin lisiar nin despechar nin tomar á alguno ningana cosa de lo suyo, sin ser anté llamado ó oido é vencido por fuero é por derecho por querella nin por querellas que a nos fuesen dadas, segunt que esto esta ordenado por el rei don Alonso nuestro padre. Teoria de las Cortes, t. ii. p. 287.

sovereign (1). Before any regular police was established, a powerful criminal might have been secure from all punishment, but for a notion, as barbarous as any which it served to counteract, that he could be lawfully killed by the personal mandate of the king. And the frequent attendance of sovereigns in their courts of judicature might lead men not accustomed to consider the indispensable necessity of legal forms, to confound an act of assassination with the execution of justice.

Confederacies of the nobility.

Though it is very improbable that the nobility were not considered as essential members of the cortes, they certainly attended in smaller numbers than we should expect to find from the great legislative and deliberative authority of that assembly. This arose chiefly from the lawless spirit of that martial aristocracy, which placed less confidence in the constitutional methods of resisting arbitrary encroachment, than in its own armed combinations (2). Such confederacies to obtain redress of grievances by force, of which there were five or six remarkable instances, were called *Hermandad* (brotherhood or union), and though not so explicitly sanctioned as they were by the celebrated Privilege of Union in Aragon, found countenance in a law of Alfonso X., which cannot be deemed so much to have voluntarily emanated from that prince as to be a record of original rights possessed by the Castilian nobility. "The duty of subjects towards their king," he says, "enjoins them not to permit him knowingly to endanger his salvation, nor to incur dishonour and inconvenience in his person or family, nor to produce mischief to his kingdom. And this may be fulfilled in two ways; one by good advice, shewing him the reason wherefore he ought not to act thus; the other by deeds, seeking means to prevent his going on to his own ruin, and putting a stop to those who give him ill counsel, forasmuch as his errors are of worse consequence than those of other men, it is the bounden duty of subjects to prevent his committing them (3)." To this law the insurgents appealed, in their coalition against Alvaro de Luna; and indeed we must confess, that however just and admirable be the principles which it breathes, so general a licence of rebellion was not likely to preserve the tranquillity of a kingdom. The deputies of towns in a cortes of 1445 petitioned the king to declare that no construction should be put on this law, inconsistent with the obedience of subjects towards their sovereign; a request to which of course he willingly acceded.

Castile, it will be apparent, bore a closer analogy to England in its form of civil polity, than France or even Aragon. But the fre-

(1) Si quis hominem per jussionem regis vel ducis sui occiderit, non requiratur ei, nec sit faidosus, qui jussio domini sui fuit, et non potuit contradicere jussionem. Leges Bajuvariorum, tit. ii. in Baluz. Capitularibus.

(2) Teoria de las Cortes, t. ii. p. 465.

(3) Ensayo Hist. Critico, p. 312.

quent disorders of its government and a barbarous state of manners, rendered violations of law much more continual and flagrant than they were in England under the Plantagenet dynasty. And besides these practical mischiefs, there were two essential defects in the constitution of Castile, through which perhaps it was ultimately subverted. It wanted those two brilliants in the coronet of British liberty, the representation of freeholders among the commons, and trial by jury. The cortes of Castile became a congress of deputies from a few cities, public-spirited indeed and intrepid, as we find them in bad times, to an eminent degree, but too much limited in number, and too unconnected with the territorial aristocracy, to maintain a just balance against the crown. Yet, with every disadvantage, that country possessed a liberal form of government, and was animated with a noble spirit for its defence. Spain, in her late memorable though short resuscitation, might well have gone back to her ancient institutions, and perfected a scheme of policy which the great example of England would have shewn to be well adapted to the security of freedom. What she did, or rather attempted instead, I need not recall. May her next effort be more wisely planned, and more happily terminated (1)!

Affairs of Aragon.

Though the kingdom of Aragon was very inferior in extent to that of Castile, yet the advantages of a better form of government and wiser sovereigns, with those of industry and commerce along a line of sea coast, rendered it almost equal in importance. Castile rarely intermeddled in the civil dissensions of Aragon; the kings of Aragon frequently carried their arms into the heart of Castile. During the sanguinary outrages of Peter the Cruel, and the stormy revolutions which ended in establishing the house of Trastamare, Aragon was not indeed at peace, nor altogether well governed; but her political consequence rose in the eyes of Europe through the long reign of the ambitious and wily Peter IV., whose sagacity and good fortune redeemed, according to the common notions of mankind, the iniquity with which he stripped his relation the king of Majorca of the Balearic islands, and the constant perfidiousness of his character. I have mentioned in another place the Sicilian war, prosecuted with so much eagerness for many years by Peter III. and his son Alfonso III. After this object was relinquished, James II. undertook an enterprize less splendid, but not much less difficult, the conquest of Sardinia. That island, long accustomed to independence, cost an incredible expense of blood and treasure to the kings of Aragon, during the whole fourteenth century. It was not fully subdued till the commencement of the next, under the reign of Martin.

Disputed succession after the death of Martin.

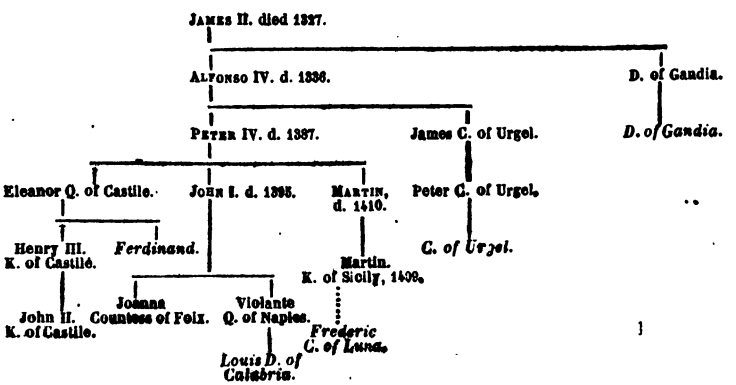
At the death of Martin, king of Aragon, in 1410, a memorable question arose as to the right of succession. Though Petronilla, daughter of Ramiro II., had reigned

(1) The first edition of this work was published in 1818.

in her own right from 1137 to 1172, an opinion seems to have gained ground from the thirteenth century, that females could not inherit the crown of Aragon. Peter IV. had excited a civil war by attempting to settle the succession upon his daughter, to the exclusion of his next brother. The birth of a son about the same time suspended the ultimate decision of this question; but it was tacitly understood that what is called the Salic law ought to prevail (1). Accordingly, on the death of John I., in 1395, his two daughters were set aside in favour of his brother Martin, though not without opposition on the part of the elder, whose husband, the count of Foix, invaded the kingdom, and desisted from his pretension only through want of force. Martin's son, the king of Sicily, dying in his father's lifetime, the nation was anxious that the king should fix upon his successor, and would probably have acquiesced in his choice. But his dissolution occurring more rapidly than was expected, the throne remained absolutely vacant. The count of Urgel had obtained a grant of the lieutenancy, which was the right of the heir apparent. This nobleman possessed an extensive territory in Catalonia, bordering on the Pyrenees. He was grandson of James, next brother to Peter IV., and according to our rules of inheritance, certainly stood in the first place. The other claimants were the duke of Gandia, grandson of James II., who, though descended from a more distant ancestor, set up a claim founded on proximity to the royal stock, which in some countries was preferred to a representative title; the duke of Calabria, son of Violante, younger daughter of John I. (the countess of Foix being childless); Frederic count of Luna, a natural son of the younger Martin, king of Sicily, legitimated by the pope, but with a reservation excluding him from royal succession; and finally, Ferdinand infant of Castile, son of the late king's sister (1). The count of Urgel was favoured

(1) Zurita, t. ii. f. 188. It was pretended that women were excluded from the crown in England as well as France: and this analogy seems to have had some influence in determining the Aragonese to adopt a Salic law.

(2) The subjoined pedigree will shew more clearly the respective titles of the competitors:—



in general by the Catalans, and he seemed to have a powerful support in Antonio de Luna, a baron of Aragon so rich, that he might go through his own estate from France to Castile. But this apparent superiority frustrated his hopes. The justiciary and other leading Aragonese were determined not to suffer this great constitutional question to be decided by an appeal to force, which might sweep away their liberties in the struggle. Urgel, confident of his right, and surrounded by men of ruined fortunes, was unwilling to submit his pretensions to a civil tribunal. His adherent, Antonio de Luna, committed an extraordinary outrage, the assassination of the archbishop of Saragosa, which alienated the minds of good citizens from his cause. On the other hand, neither the duke of Gandia, who was very old (1), nor the count of Luna, seemed fit to succeed. The party of Ferdinand, therefore, gained ground by degrees. It was determined, however, to render a legal sentence. The cortes of each nation agreed upon the nomination of nine persons, three Aragonese, three Catalans, and three Valencians, who were to discuss the pretensions of the several competitors, and by a plurality of six votes to adjudge the crown. Nothing could be more solemn, more peaceful, nor, in appearance, more equitable than the proceedings of this tribunal. They summoned the claimants before them, and heard them by counsel. One of these, Frederic of Luna, being ill defended, the court look charge of his interests, and named other advocates to maintain them. A month was passed in hearing arguments; a second was allotted to considering them; and, at the expiration of the prescribed time, it was announced to the people by the mouth of St. Vincent Ferrier, that Ferdinand of Castile had ascended the throne (2).

Decision in favour of Ferdinand of Castile. 1412

In this decision, it is impossible not to suspect that the judges were swayed rather by politic considerations than a strict sense of hereditary right. It was therefore by no means universally popular, especially in Catalonia, of which principality the count of Urgel was a native; and perhaps the great rebellion of the Catalans fifty years afterwards may be traced to the disaffection which this breach, as they thought, of the lawful succession had excited. Ferdinand however was well received in Aragon. The cortes generously recommended the count of Urgel to his favour, on account of the great expenses he had in-

(1) This duke of Gandia died during the interregnum. His son, though not so objectionable on the score of age, seemed to have a worse claim; yet he became a competitor.

(2) Biancæ Commentaria, in Schotti Hispania illustrata, t. ii. Zurita, t. iii. f. 1—74. Vincent Ferrier was the most distinguished churchman of his time in Spain. His influence, as one of the nine judges, is said to have been very instrumental in procuring the crown for Ferdinand. Five others voted the same way; one for the count of Urgel; one doubtfully between the count of Urgel and duke of Gandia; the ninth declined to vote. Zurita, t. iii. f. 71. It is curious enough, that John king of Castile was altogether disregarded, though his claim was at least as plausible as that of his uncle Ferdinand. Indeed, upon the principles of inheritance to which we are accustomed, Louis duke of Calabria had a prior right to Ferdinand, admitting the rule which it was necessary for both of them to establish; namely, that a right of succession might be transmitted through females, which females could not personally enjoy. This, as is well known, had been advanced in the preceding age by Edward III., as the foundation of his claim to the crown of France.

curred in prosecuting his claim. But Urgel did not wait the effect of this recommendation. Unwisely attempting a rebellion with very inadequate means, he lost his estates, and was thrown for life into prison. Ferdinand's successor was his son Alfonso V., more distinguished in the history of Italy than of Spain. For all the latter years of his life, he never quitted the kingdom that he had acquired by his arms; and, enchanted by the delicious air of Naples, entrusted the government of his patrimonial territories to the care of a brother and an heir. John II., upon whom they devolved by the death of Alfonso without legitimate progeny, had been engaged during his youth in the turbulent revolutions of Castile, as the head of a strong party that opposed the domination of Alvaro de Luna. By marriage with the heiress of Navarre, he was entitled, according to the usage of those times, to assume the title of king, and administration of government during her life. But his ambitious retention of power still longer produced events which are the chief stain on his memory. Charles prince of Viana was, by the constitution of Navarre, entitled to succeed his mother. She had requested him in her testament not to assume the government without his father's consent. That consent was always withheld. The prince raised what we ought not to call a rebellion; but was made prisoner, and remained for some time in captivity. John's ill disposition towards his son was exasperated by a step-mother, who scarcely disguised her intention of placing her own child on the throne of Aragon at the expense of the eldest-born. After a life of perpetual oppression, chiefly passed in exile or captivity, the prince of Viana died in Catalonia, at a moment when that province was in open insurrection upon his account. Though it hardly seems that the Catalans had any more general provocations, they persevered for more than ten years with inveterate obstinacy in their rebellion; offering the sovereignty first to a prince of Portugal, and afterwards to Regnier duke of Anjou, who was destined to pass his life in unsuccessful competition for kingdoms. The king of Aragon behaved with great clemency towards these insurgents on their final submission.

Alfonso V. 1416

John II. 1458

1420

1442

1461

It is consonant to the principle of this work, to pass lightly over the common details of history, in order to fix the reader's attention more fully on subjects of philosophical inquiry. Perhaps in no European monarchy, except our own, was the form of government more interesting than in Aragon, as a fortunate temperament of law and justice with the royal authority. So far as any thing can be pronounced of its earlier period before the capture of Saragosa in 1118, it was a kind of regal aristocracy, where a small number of powerful barons elected their sovereign on every vacancy, though,

Constitution of Aragon.

Originally a sort of regal aristocracy.

as usual in other countries, out of one family; and considered him as little more than the chief of their confederacy (1). These were the ricos hombres or barons, the first order of the state. Among these the kings of Aragon, in subsequent times, as they extended their dominions, shared the conquered territory in grants of honours on a feudal tenure (2). For this system was fully established in the kingdom of Aragon. A rico hombre, as we read in Vitalis, bishop of Huesca about the middle of the thirteenth century (3), must hold of the king an honour or barony capable of supporting more than three knights; and this he was bound to distribute among his vassals in military fiefs. Once in the year he might be summoned with his feudatories to serve the sovereign for two months (Zurita says three); and he was to attend the royal court, or general assembly, as a counsellor, whenever called upon, assisting in its judicial as well as deliberative business. In the towns and villages of his barony he might appoint bailiffs to administer justice, and receive penalties; but the higher criminal jurisdiction seems to have been reserved to the crown. According to Vitalis, the king could divest these ricos hombres of their honours at pleasure, after which they fell into the class of mesnadaries, or mere tenants in chief. But if this were constitutional in the reign of James I., which Blancas denies, it was not long permitted by that high-spirited aristocracy. By the General Privilege or Charter of Peter III., it is declared that no barony can be taken away without a just cause and legal sentence of the justiciary and council of barons (4). And the same protection was extended to the vassals of the ricos hombres.

Privileges of the ricos hombres or barons.

Below these superior nobles were the mesnadaries, corresponding to our mere tenants in chief, holding estates not baronial immediately from the crown; and the military vassals of the high nobility, the knights and *infanzones;* a word which may be rendered by gentlemen. These had considerable privileges in that aristocratic government: they were exempted from all taxes, they could only be tried by the royal judges for any crime; and offences committed against them were punished with additional severity (5). The ignoble classes were, as in other countries, the burgesses of towns, and the villeins or peasantry. The peasantry seem to have been subject

Lower nobility.

Burgesses and peasantry.

(1) Alfonso III. complained, that his barons wanted to bring back old times, quando havia en el reyno tantos reyes como ricos hombres. Blancæ Commentaria, p. 787. The form of election, supposed to have been used by these bold barons, is well known. "We who are as good as you, chuse you for our king and lord, provided that you observe our laws and privileges, and if not, not." But I do not much believe the authenticity of this form of words. See Robertson's Charles V. vol. i. note 31. It is, however, sufficiently agreeable to the spirit of the old government.

(2) Los ricos hombres, por los feudos que tenian del rey, eran obligados de seguir el rey, si iva en persona á la guerra, y residir en ella tres meses en cada un año. Zurita, t. i. fol. 43. (Saragosa, 1610.) A fief was usually called in Aragon an honour, que en Castilla llamavan tierra, y en el principado de Cataluña feudo. fol. 46.

(3) I do not know whether this work of Vitalis has been printed; but there are large extracts from it in Blancas's history, and also in Du Cange, under the words Infancia, Mesnadarius, etc. Several illustrations of these military tenures may be found in the Fueros de Aragon, especially lib. 7.

(4) Blancæ Comm. p. 730.

(5) P. 732.

to territorial servitude, as in France and England. Vitalis says, that some villeins were originally so unprotected, that, as he expresses it, they might be divided into pieces by the sword among the sons of their masters; till they were provoked to an insurrection, which ended in establishing certain stipulations, whence they obtained the denomination of villeins *de parada*, or of convention (1).

Liberties of the Aragonese kingdom.

Though from the twelfth century the principle of hereditary succession to the throne superseded, in Aragon as well as Castile, the original right of chusing a sovereign within the royal family, it was still founded upon one more sacred and fundamental, that of compact. No king of Aragon was entitled to assume that name, until he had taken a coronation oath, administered by the justiciary at Saragosa, to observe the laws and liberties of the realm (2). Alfonso III., in 1285, being in France at the time of his father's death, named himself king in addressing the states, who immediately remonstrated on this premature assumption of his title, and obtained an apology (3). Thus too Martin, having been called to the crown of Aragon by the cortes, in 1395, was specially required not to exercise any authority before his coronation (4).

General Privilege of 1283.

Blancas quotes a noble passage from the acts of cortes in 1451. "We have always heard of old time, and it is found by experience, that, seeing the great barrenness of this land, and the poverty of the realm, if it were not for the liberties thereof, the folk would go hence to live and abide in other realms, and lands more fruitful (5)." This high spirit of freedom had long animated the Aragonese. After several contests with the crown in the reign of James I., not to go back to earlier times, they compelled Peter III., in 1283, to grant a law, called the General Privilege, the Magna Charta of Aragon, and perhaps a more full and satisfactory basis of civil liberty than our own. It contains a series of provisions against arbitrary tallages, spoliations of property, secret process after the manner of the Inquisition in criminal charges, sentences of the justiciary without assent of the cortes, appointment of foreigners or Jews to judicial offices, trial of accused persons in places beyond the kingdom, the use of torture, except in charges of falsifying the coin, and the bribery of judges.

(1) Blancæ Comm. p. 729.

(2) Zurita, Anales de Aragon, t. i. fol. 104.; t. iii. fol. 76.

(3) Blancæ Comm. p. 661. They acknowledged, at the same time, that he was their natural lord, and entitled to reign as lawful heir to his father—so oddly were the hereditary and elective titles jumbled together. Zurita, t. i. fol. 303.

(4) Zurita, t. ii. fol. 424.

(5) Siempre havemos oydo dezir antiguamente, é se troba por esperiencia, que atendida la grande esterilidad de aquesta tierra, é pobreza de aquesta regne, si non fuese por las liberiades de aquel, se irian a vivir, y habitar las gentes a otros reynos, é tierras mas frutieras. p. 571. Aragon was, in fact, a poor country, barren and ill-peopled. The kings were forced to go to Catalonia for money, and indeed were little able to maintain expensive contests. The wars of Peter IV. in Sardinia, and of Alfonso V. with Genoa and Naples, impoverished their people. A hearth-tax having been imposed in 1404, it was found that there were 42,683 houses in Aragon, which, according to most calculations, will not give much more than 200,000 inhabitants. In 1429, a similar tax being laid on, it is said that the number of houses was diminished in consequence of war. Zurita, t. iii. fol. 189. It contains at present between 600,000 and 700,000 inhabitants.

These are claimed as the ancient liberties of their country. "Absolute power (mero imperio é mixto), it is declared, never was the constitution of Aragon, nor of Valencia, nor yet of Ribagorça, nor shall there be in time to come any innovation made; but only the law, custom, and privilege which has been anciently used in the aforesaid kingdoms (1)."

Privilege of Union.

The concessions extorted by our ancestors from John, Henry III., and Edward I., were secured by the only guarantee those times could afford, the determination of the barons to enforce them by armed confederacies. These, however, were formed according to emergencies, and, except in the famous commission of twenty-five conservators of Magna Charta, in the last year of John, were certainly unwarranted by law. But the Aragonese established a positive right of maintaining their liberties by arms. This was contained in the Privilege of Union granted by Alfonso III., in 1287, after a violent conflict with his subjects; but which was afterwards so completely abolished and even eradicated from the records of the kingdom, that its precise words have never been recovered (2). According to Zurita, it consisted of two articles: first, that in the case of the king's proceeding forcibly against any member of the union without previous sentence of the justiciary, the rest should be absolved from their allegiance; secondly, that he should hold cortes every year in Saragosa (3). During the two subsequent reigns of James II. and Alfonso IV., little pretence seems to have been given for the exercise of this right. But dissensions breaking out under Peter IV., in 1347, rather on account of his attempt to settle the crown upon his daughter, than of any specific public grievances, the nobles had

Revolt against Peter IV.

recourse to the Union, that last voice, says Blancas, of an almost expiring state, full of weight and dignity, to chastise the presumption of kings (4). They assembled at Saragosa, and used a remarkable seal for all their public instruments, an engraving from which may be seen in the historian I have just quoted. It represents the king sitting on his throne, with the confederates kneeling in a suppliant attitude around, to denote their loyalty, and unwillingness to offend. But in the background tents and lines of spears are discovered, as a hint of their ability and resolution to defend themselves. The legend is Sigillum Unionis Aragonum. This respectful demeanour towards a sovereign against whom they were waging war, reminds us of the language held out by our Long Parliament, before the Presbyterian

(1) Fueros de Aragon, fol. 9. Zurita, t. i. fol. 205.

(2) Blancas says that he had discovered a copy of the Privilege of Union in the archives of the see of Tarragona, and would gladly have published it, but for his deference to the wisdom of former ages, which had studiously endeavoured to destroy all recollection of that dangerous law. p. 662.

(3) T. i. fol. 322.

(4) Priscam illam Unionis quasi morientis reipublicæ extremam vocem, auctoritatis et gravitatis plenam, regum insolentiæ apertum vindicem excitârunt, summâ ac singulari bonorum omnium consensione. p. 669. It is remarkable, that such strong language should have been tolerated under Philip II.

party was overthrown. And although it has been lightly censured as inconsistent and hypocritical, this tone is the safest that men can adopt, who deeming themselves under the necessity of withstanding the reigning monarch, are anxious to avoid a change of dynasty, or subversion of their constitution. These confederates were defeated by the king at Epila in 1348 (1). But his prudence and the remaining strength of his opponents inducing him to pursue a moderate course, there ensued a more legitimate and permanent balance of the constitution from this victory of the royalists. The Privilege of Union was abrogated, Peter himself cutting to pieces with his sword the original instrument. But in return many excellent laws for the security of the subject were enacted (2); and their preservation was entrusted to the greatest officer of the kingdom, the justiciary, whose authority and pre-eminence may in a great degree be dated from this period (3). That watchfulness over public liberty, which originally belonged to the aristocracy of ricos hombres, always apt to thwart the crown, or to oppress the people, and which was afterwards maintained by the dangerous privilege of union, became the duty of a civil magistrate, accustomed to legal rules, and responsible for his actions, whose office and functions are the most pleasing feature in the constitutional history of Aragon.

Privilege of Union abolished. Other provisions instituted.

The justiza or justiciary of Aragon has been treated by some writers as a sort of anomalous magistrate, created originally as an intermediate power between the king and people, to watch over the exercise of royal authority. But I do not perceive that his functions were, in any essential respect, different from those of the chief justice of England, divided, from the time of Edward I., among the judges of the King's Bench. We should undervalue our own constitution by supposing that there did not reside in that court as perfect an authority to redress the subject's injuries, as was possessed by the Aragonese magistrate. In the practical exercise, indeed, of this power, there was an abundant difference. Our English judges, more timid and pliant, left to the remonstrances of parliament that redress of grievances which very frequently lay within the sphere of their jurisdiction. There is, I believe, no recorded instance of a habeas corpus granted in any case of illegal imprisonment by the crown or its officers during the continuance of the Plantagenet dynasty. We shall speedily take notice of a very different conduct in Aragon.

Office of justiciary.

(1) Zurita observes that the battle of Epila was the last fought in defence of public liberty, for which it was held lawful of old to take up arms, and resist the king, by virtue of the privileges of Union. For the authority of the justiciary being afterwards established, the former contentions and wars came to an end; means being found to put the weak on a level with the powerful, in which consists the peace and tranquillity of all states; and from thence the name of Union was, by common consent, proscribed. t. ii. fol. 226. Blancas also remarks, that nothing could have turned out more advantageous to the Aragonese, than their ill fortune at Epila.

(2) Fueros de Aragon. De iis, quæ Dominus rex. fol. 14 et alibi passim.

(3) Blanc. Comm. p. 671. 811. Zurita, t. ii. fol. 229.

The office of justiciary, whatever conjectural antiquity some have assigned to it, is not to be traced beyond the capture of Saragosa in 1118, when the series of magistrates commences (1). But for a great length of time they do not appear to have been particularly important; the judicial authority residing in the council of ricos hombres, whose suffrages the justiciary collected, in order to pronounce their sentence rather than his own. A passage in Vitalis, bishop of Huesca, whom I have already mentioned, shews this to have been the practice during the reign of James I. (2). Gradually, as notions of liberty became more definite, and laws more numerous, the reverence paid to their permanent interpreter grew stronger; and there was fortunately a succession of prudent and just men in that high office, through whom it acquired dignity and stable influence. Soon after the accession of James II., on some dissensions arising between the king and his barons, he called in the justiciary as a mediator, whose sentence, says Blancas, all obeyed (3). At a subsequent time in the same reign, the military orders, pretending that some of their privileges were violated, raised a confederacy or union against the king. James offered to refer the dispute to the justiciary, Ximenes Salanova, a man of eminent legal knowledge. The knights resisted his jurisdiction, alleging the question to be of spiritual cognizance. He decided it however against them in full cortes at Saragosa, annulled their league, and sentenced the leaders to punishment (4). It was adjudged also that no appeal could lie to the spiritual court from a sentence of the justiciary passed with assent of the cortes. James II. is said to have frequently sued his subjects in the justiciary's court, to shew his regard for legal measures; and during the reign of this good prince, its authority became more established (5). Yet it was not perhaps looked upon as fully equal to maintain public liberty against the crown, till, in the cortes of 1348, after the Privilege of Union was for ever abolished, such laws were enacted, and such authority given to the justiciary, as proved eventually a more adequate barrier against oppression, than any other country could boast. All the royal as well as territorial judges were bound to apply for his opinion in case of legal difficulties arising in their courts, which he was to certify within eight days. By subsequent statutes of the same reign, it was made penal for any one to obtain letters from the king, impeding the execution of the justiza's pro-

(1) Blancæ Comment. p. 638.

(2) Id. p. 722. Zurita indeed refers the justiciary's pre-eminence to an earlier date; namely, the reign of Peter II., who took away a great part of the local jurisdictions of the ricos hombres. t. i. fol. 102. But if I do not misunderstand the meaning of Vitalis, his testimony seems to be beyond dispute. By the General Privilege of 1283, the justiciary was to advise with the ricos hombres, in all cases where the king was a party against any of his subjects. Zurita, f. 281 See also f. 180.

(3) P. 663.

(4) Zurita, t. i. f. 463.; t. ii. f. 34. Blanc. p. 664. The assent of the cortes seems to render this in a nature of a legislative, rather than a judicial proceeding; but it is difficult to pronounce about a transaction so remote in time, and in a foreign country, the native historians writing rather concisely.

(5) Blanc. p. 663. James acquired the surname of Just, el Justiciero, by his fair dealings towards his subjects. Zurita, t. ii. fol. 82.

cess, and they were declared null. Inferior courts were forbidden to proceed in any business after his prohibition (1). Many other laws might be cited, corroborating the authority of the great magistrate, but there are two parts of his remedial jurisdiction, which deserve special notice.

Processes of a jurisfirma and manifestation.

These are the processes of jurisfirma, or firma del derecho, and of manifestation. The former bears some analogy to the writs of *pone* and *certiorari* in England, through which the Court of King's Bench exercises its right of withdrawing a suit from the jurisdiction of inferior tribunals. But the Aragonese jurisfirma was of more extensive operation. Its object was not only to bring a cause commenced in an inferior court before the justiciary, but to prevent or inhibit any process from issuing against the person who applied for its benefit, or any molestation from being offered to him; so that, as Blancas expresses it, when we have entered into a recognizance (firmè et graviter asseveremus) before the justiciary of Aragon to abide the decision of law, our fortunes shall be protected by the interposition of his prohibition, from the intolerable iniquity of the royal judges (2). The process, termed manifestation, afforded as ample security for personal liberty as that of jurisfirma did for property. "To *manifest* any one," says the writer so often quoted, "is to wrest him from the hands of the royal officers, that he may not suffer any illegal violence; not that he is set at liberty by this process, because the merits of his case are still to be inquired into; but because he is now detained publicly, instead of being as it were concealed, and the charge against him is investigated, not suddenly or with passion, but in calmness and according to law, therefore this is called manifestation (3)." The power of this writ (if I may apply our term)

(1) Fueros de Aragon: Quod in dubiis non crassis. (A. D. 1348.) Quod impetrans (1372), etc. Zurita, t. ii. fol. 229. Blanc. p. 671. and 811.

(2) P. 751. Fueros de Aragon, f. 137.

(3) Est apud nos manifestare, reum subitò sumere, atque è regiis manibus extorquere, ne qua ipsi contra jus vis inferatur. Non quòd tunc reus judicio liberetur; nihilominùs tamen, ut loquimur, de meritis causæ ad plenum cognoscitur. Sed quòd deinceps manifesto teneatur, quasi anteà celatus extitisset; necesseque deindè sit de ipsius culpâ, non impetu et cum furore, sed sedatis prorsùs animis, et juxta constitutas leges judicari. Ex eo autem, quod hujusmodi judicium manifesto deprehensum, omnibus jam patere debeat, Manifestationis sibi nomen arripuit. p. 675.

Ipsius Manifestationis potestas tam solida est et repentina, ut homini jam collum in laqueum inserenti subveniat. Illius enim præsidio, damnatus, dùm per leges licet, quasi experiendi juris gratiâ, de manibus judicum confestim extorquetur, et in carcerem ducitur ad id ædificatum, ibidemque asservatur tamdiù, quamdiù jurene an injuriâ quid in eâ causâ factum fuerit, judicatur. Propterea carcer hic vulgari linguâ la carcel de los manifestados nuncupatur. p. 751.

Fueros de Aragon, fol. 60. De Manifestationibus personarum. Independently of this right of manifestation by writ of the justiciary, there are several statutes in the Fueros against illegal detention, or unnecessary severity towards prisoners. (De Custodiâ reorum, f. 163.) No judge could proceed secretly in a criminal process; an indispensable safeguard to public liberty, and one of the most salutary, as well as most ancient, provisions in our own constitution. (De judiciis.) Torture was abolished, except in cases of coining false money, and then only in respect of vagabonds. (General Privilege of 1283.)

Zurita has explained the two processes of jurisfirma and manifestation so perspicuously, that, as the subject is very interesting, and rather out of the common way, I shall both quote and translate the passage. Confirmar de derecho, que es dar caucion a estar a justicia, se conceden literas inhibitorias por el justicia de Aragon, para que no puedan ser presos, ni privados, ni despojados de su possession, hasta que judicialmente se conozca y declare sobre la pretension, y justicia de las partes, y parezca por processo legitimo, que se debe revocar la tal inhibicion. Esta fué la suprema y principal autoridad del justicia de Aragon desde que este magistrado tuvo origen, y lo que llama manifestacion; porque assi como la firma de derecho por privilegio general del reyno impide, que no puede ninguno ser preso, o agraviado con-

was such, as he elsewhere asserts, that it would rescue a man whose neck was in the halter. A particular prison was allotted to those detained for trial under this process.

Instances of their application.

Several proofs that such admirable provisions did not remain a dead letter in the law of Aragon, appear in the two historians, Blancas and Zurita, whose noble attachment to liberties, of which they had either witnessed, or might foretell the extinction, continually displays itself. I cannot help illustrating this subject by two remarkable instances. The heir apparent of the kingdom of Aragon had a constitutional right to the lieutenancy, or regency, during the sovereign's absence from the realm. The title and office indeed were permanent, though the functions must of course have been superseded during the personal exercise of royal authority. But as neither Catalonia nor Valencia, which often demanded the king's presence, were considered as parts of the kingdom, there were pretty frequent occasions for this anticipated reign of the eldest prince. Such a regulation was not likely to diminish the mutual and almost inevitable jealousies between kings and their heirs apparent, which have so often disturbed the tranquillity of a court and a nation. Peter IV. removed his eldest son, afterwards John I., from the lieutenancy of the kingdom. The prince entered into a firma del derecho before the justiciary, Dominic de Cerda, who, pronouncing in his favour, enjoined the king to replace his son in the lieutenancy as the undoubted right of the eldest born. Peter obeyed, not only in fact, to which, as Blancas observes, the law compelled him, but with apparent cheerfulness (1). There are indeed no private persons, who have so strong an interest in maintaining a free constitution and the civil liberties of their countrymen, as the members of royal families; since none are so much exposed, in absolute governments, to the resentment and suspicion of a reigning monarch.

John I., who had experienced the protection of law in his weakness, had afterwards occasion to find it interposed against his power. This king had sent some citizens of Saragosa to prison without form

tra razon y justicia, de la misma manera la manifestacion, que es otro privilegio, y remedio muy principal, tiene fuerza, quando alguno es preso sin preceder processo legitimo, o quando lo prenden de hecho sin orden de justicia; y en estos casos solo el justicia de Aragon, quando se tiene recurso à él, se interpone, manifestando el preso, que es tomarlo à su mano, de poder de qualquiera juez, aunque sea el mas supremo; y es obligado el justicia de Aragon y sus lugartenientes de proveer la manifestacion en el mismo instante, que les es pedido, sin preceder informacion; y basta que se pida por qualquier persona que se diga procurador del que quiere que lo tengan por manifiesto. t. ii. fol. 386. "Upon a firma de derecho, which is to give security for abiding the decision of law, the justiciary of Aragon issues letters inhibiting all persons to arrest the party, or deprive him of his possession, until the matter shall be judicially inquired into, and it shall appear that such inhibition ought to be revoked. This process and that which is called manifestation have been the chief powers of the justiciary, ever since the commencement of that magistracy. And as the firma de derecho by the general privilege of the realm, secures every man from being arrested or molested against reason and justice, so the manifestation, which is another principal and remedial right, takes place when any one is actually arrested without lawful process; and in such cases only the justiciary of Aragon, when recourse is had to him, interposes by *manifesting* the person arrested, that is, by taking him into his own hands, out of the power of any judge, however high in authority; and this manifestation the justiciary, or his deputies in his absence, are bound to issue at the same instant it is demanded, without further inquiry; and it may be demanded by any one as attorney of the party requiring to be manifested."

(1) Zurita, ubi supra. Blancas, p. 673.

of law. They applied to Juan de Cerda, the justiciary, for a manifestation. He issued his writ accordingly; nor, says Blancas, could he do otherwise, without being subject to a heavy fine. The king, pretending that the justiciary was partial, named one of his own judges, the vice-chancellor, as coadjutor. This raised a constitutional question, whether, on suspicion of partiality, a coadjutor to the justiciary could be appointed. The king sent a private order to the justiciary not to proceed to sentence upon this interlocutory point until he should receive instructions in the council, to which he was directed to repair. But he instantly pronounced sentence in favour of his exclusive jurisdiction without a coadjutor. He then repaired to the palace. Here the vice-chancellor, in a long harangue, enjoined him to suspend sentence till he had heard the decision of the council. Juan de Cerda answered that, the case being clear, he had already pronounced upon it. This produced some expressions of anger from the king, who began to enter into an argument on the merits of the question. But the justiciary answered that, with all deference to his majesty, he was bound to defend his conduct before the cortes, and not elsewhere. On a subsequent day, the king having drawn the justiciary to his country palace on pretence of hunting, renewed the conversation with the assistance of his ally the vice-chancellor; but no impression was made on the venerable magistrate, whom John at length, though much pressed by his advisers to violent courses, dismissed with civility. The king was probably misled throughout this transaction, which I have thought fit to draw from obscurity, not only in order to illustrate the privilege of manifestation, but as exhibiting an instance of judicial firmness and integrity, to which, in the fourteenth century, no country perhaps in Europe could offer a parallel (1).

Office of justiciary held for life.

Before the cortes of 1348, it seems as if the justiciary might have been displaced at the king's pleasure. From that time he held his station for life. But in order to evade this law, the king sometimes exacted a promise to resign upon request. Ximenes Cerdan, the justiciary in 1420, having refused to fulfil this engagement, Alfonso V. gave notice to all his subjects not to obey him, and notwithstanding the alarm which this encroachment created, eventually succeeded in compelling him to quit his office. In 1439, Alfonso insisted with still greater severity upon the execution of a promise to resign made by another justiciary, detaining him in prison until his death. But the cortes of 1442 proposed a law, to which the king reluctantly acceded, that the justiciary should not be compellable to resign his office on account of any previous engagement he might have made (2).

Responsibility of this magistrate.

But lest these high powers, imparted for the prevention of abuses, should themselves be abused, the justi-

(1) Blancas Commentar. ubi supra. Zurita relates the story, but not so fully.

(2) Fueros de Aragon, fol. 22. Zurita, t. iii. fol. 240. 255. 272. Blanc. Comment., p. 701.

ciary was responsible, in case of an unjust sentence, to the extent of the injury inflicted (1); and was also subjected, by a statute of 1390, to a court of inquiry, composed of four persons chosen by the king out of eight named by the cortes; whose office appears to have been that of examining and reporting to the four estates in cortes by whom he was ultimately to be acquitted or condemned. This superintendence of the cortes, however, being thought dilatory and inconvenient, a court of seventeen persons was appointed in 1461, to hear complaints against the justiciary. Some alterations were afterwards made in this tribunal (2). The justiciary was always a knight, chosen from the second order of nobility, the barons not being liable to personal punishment. He administered the coronation oath to the king; and in the cortes of Aragon, the justiciary acted as a sort of royal commissioner, opening or proroguing the assembly by the king's direction.

Rights of legislation and taxation.

No laws could be enacted, or repealed, nor any tax imposed without the consent of the estates duly assembled (3). Even as early as the reign of Peter II., in 1205, that prince having attempted to impose a general tallage, the nobility and commons united for the preservation of their franchises; and the tax was afterwards granted in part by the cortes (4). It may easily be supposed that the Aragonese were not behind other nations in statutes to secure these privileges, which upon the whole appear to have been more respected than in any other monarchy (5). The General Privilege of 1283 formed a sort of ground-work for this legislation, like the Great Charter in England. By a clause in this law, cortes were to be held every year at Saragosa. But under James II., their time of meeting was reduced to once in two years, and the place was left to the king's discretion (6). Nor were the cortes of Aragon less vigilant than those of Castile in claiming a right to be

(1) Fueros de Aragon, fol. 25.

(2) Blancas. Zurita, t. iii. f. 321., t. iv. f. 103. These regulations were very acceptable to the nation. In fact, the justiza of Aragon had possessed much more unlimited powers than ought to be entrusted to any single magistrate. The court of King's Bench in England, besides its consisting of four coordinate judges, is checked by the appellant jurisdictions of the Exchequer Chamber and House of Lords, and, still more importantly, by the rights of juries.

(3) Majores nostri, quæ de omnibus statuenda essent, noluerunt juberi, vetarive posse, nisi vocatis, descriptisque ordinibus, ac cunctis eorum adhibitis suffragiis, re ipsâ cognitâ et promulgatâ. Undè perpetuum illud nobis comparatum est jus, ut communes et publicæ leges neque tolli, neque rogari possint, nisi priùs universus populus unâ voce comitiis institutis suum eâ de re liberum suffragium ferat; idque posteà ipsius regis assensu comprobetur. Blancæ Comment., p. 761.

(4) Zurita, t. i. fol. 92.

(5) Fueros de Aragon: Quod sissæ in Aragonia removeantur: (A. D. 1272.) De prohibitione sissarum: (1398.) De conservatione patrimonii: (1461.) I have only remarked two instances of arbitrary taxation in Zurita's history, which is singularly full of information; one, in 1343, when Peter IV. collected money from various cities, though, not without opposition; and the other a remonstrance of the cortes in 1383 against heavy taxes; and it is not clear that this refers to general unauthorised taxation. Zurita, t. ii. f. 168. and 382. Blancas mentions that Alfonso V. set a tallage upon his towns for the marriage of his natural daughters, which he might have done, had they been legitimate; but they appealed to the justiciary's tribunal, and the king receded from his demand. p. 701.

Some instances of tyrannical conduct in violation of the constitutional laws occur, as will naturally be supposed, in the annals of Zurita. The execution of Bernard Cabrera under Peter IV., t. ii. f. 336., and the severities inflicted on queen Forcia by her son-in-law John I., f. 391., are perhaps as remarkable as any.

(6) Zurita, t. i. f. 426. In general the session lasted from four to six months. One assembly was prorogued from time to time, and continued six years, from 1446 to 1452, which was complained of as a violation of the law for their biennial renewal. t. iv. f. 6.

consulted in all important deliberations of the executive power, or in remonstrating against abuses of government, or in superintending the proper expenditure of public money (1). A variety of provisions, intended to secure these parliamentary privileges, and the civil liberties of the subject, will be found dispersed in the collection of Aragonese laws (2), which may be favourably compared with those of our own statute-book.

Cortes of Aragon.

Four estates, or, as they were called, arms (brazos), formed the cortes of Aragon; the prelates, and commanders of military orders, who passed for ecclesiastics (3); the barons or ricos hombres; the equestrian order or infanzones; and the deputies of royal towns (4). The two former had a right of appearing by proxy. There was no representation of the infanzones, or lower nobility. But it must be remembered that they were not numerous, nor was the kingdom large. Thirty-five are reckoned by Zurita as present in the cortes of 1395, and thirty-three in those of 1412; and as upon both occasions an oath of fealty to a new monarch was to be taken, I presume that nearly all the nobility of the kingdom were present (5). The ricos hombres do not seem to have exceeded twelve or fourteen in number. The ecclesiastical estate was not much, if at all, more numerous. A few principal towns alone sent deputies to the cortes; but their representation was very full; eight or ten, and sometimes more, sat for Saragosa, and no town appears to have had less than four representatives. During the interval of the cortes, a permanent commission, varying a good deal as to numbers, but chosen out of the four estates, was empowered to sit with very considerable authority, receiving and managing the public revenue, and protecting the justiciary in his functions (6).

Government of Valencia and Catalonia.

The kingdom of Valencia, and principality of Catalonia, having been annexed to Aragon, the one by conquest, the other by marriage, were always kept distinct from it in their laws and government. Each had its cortes, composed

(1) The Sicilian war of Peter III. was very unpopular, because it had been undertaken without consent of the barons, contrary to the practice of the kingdom; porque ningun negocio arduo emprendian, sin acuerdo y consejo de sus ricos hombres. Zurita, t. i. fol. 264. The cortes, he tells us, were usually divided into two parties, whigs and tories; estava ordinariamente dividida en dos partes, la una qre pensava procurar el beneficio del reyno, y la otra que el servicio del rey. t. iii. f. 321.

(2) Fueros y observancias del reyno de Aragon. 2 vols. in fol. Saragosa, 1667. The most important of these are collected by Blancas, p. 750.

(3) It is said by some writers, that the ecclesiastical arm was not added to the cortes of Aragon till about the year 1300. But I do not find mention in Zurita of any such constitutional change at that time; and the prelates, as we might expect from the analogy of other countries, appear as members of the national council long before. Queen Petronilla, in 1142, summoned a los perlados, ricos hombres, y cavalleros, y procuradores de las ciudades y villas, que le juntassen a cortes generales en la ciudad de Huesca. Zurita, t. i. fol. 71. So in the cortes of 1275, and on other occasions.

(4) Popular representation was more ancient in Aragon than in any other monarchy. The deputies of towns appear in the cortes of 1133, as Robertson has remarked from Zurita. Hist. of Charles V., note 32. And this cannot well be called in question, or treated as an anomaly; for we find them mentioned in 1142 (the passage cited in the last note), and again in 1164, when Zurita enumerates many of their names. fol. 74. The institution of consejos, or corporate districts under a presiding town, prevailed in Aragon as it did in Castile.

(5) Zurita, t. ii. f. 420.; t. iii. f. 76.

(6) Blancæ Comment., p. 762. Zurita, t. iii. f. 76.; f. 182. et alibi.

of three estates, for the division of the nobility into two orders did not exist in either country. The Catalans were tenacious of their ancient usages, and averse to incorporation with any other people of Spain. Their national character was high-spirited and independent; in no part of the peninsula did the territorial aristocracy retain, or at least pretend to such extensive privileges (1), and the citizens were justly proud of wealth acquired by industry, and of renown achieved by valour. At the accession of Ferdinand I., which they had not much desired, the Catalans obliged him to swear three times successively to maintain their liberties, before they would take the reciprocal oath of allegiance (2). For Valencia it seems to have been a politic design of James the Conqueror to establish a constitution nearly analogous to that of Aragon, but with such limitations as he should impose, taking care that the nobles of the two kingdoms should not acquire strength by union. In the reigns of Peter III. and Alfonso III., one of the principal objects contended for by the barons of Aragon was the establishment of their own laws in Valencia; to which the king never acceded (3). They permitted however the possessions of the natives of Aragon in the latter kingdom to be governed by the law of Aragon (4). These three states, Aragon, Valencia, and Catalonia, were perpetually united by a law of Alfonso III.; and every king on his accession was bound to swear that he would never separate them (5). Sometimes general cortes of the kingdoms and principality were convened; but the members did not, even in this case, sit together, and were no otherwise united, than as they met in the same city (6).

State of police.

I do not mean to represent the actual condition of society in Aragon as equally excellent with the constitutional laws. Relatively to other monarchies, I have already observed, there seem to have been fewer excesses of the royal prerogative in that kingdom. But the licentious habits of a feudal aristocracy prevailed very long. We find in history instances of private war between the great families, so as to disturb the peace of the whole nation, even near the close of the fifteenth century (7). The right of avenging injuries by arms, and the ceremony of diffidation, or solemn defiance of an enemy, are preserved by the laws. We even meet with the ancient barbarous usage of paying a composition to the kindred of a murdered man (8). The citizens of Saragosa were sometimes turbulent, and a refractory nobleman sometimes defied the ministers of justice. But owing to the remarkable copiousness of the principal Aragonese historian, we find

(1) Zurita, t. ii. f. 360. The villenage of the peasantry in some parts of Catalonia was very severe, even near the end of the fifteenth century. t. iv. f. 327.

(2) Zurita, t. iii. f. 81.

(3) Id. t. i. f. 281. 310. 333. There was originally a justiciary in the kingdom of Valencia, f. 281.; but this, I believe, did not long continue.

(4) T. ii. f. 433.

(5) T. ii. f. 91.

(6) Biancæ Comment., p. 760. Zurita, t. iii. f. 239.

(7) Zurita, t. iv. fol. 189.

(8) Fueros de Aragon, f. 166. etc.

more frequent details of this nature than in the scantier annals of some countries. The internal condition of society was certainly far from peaceable in other parts of Europe.

Union of Castile and Aragon.

By the marriage of Ferdinand with Isabella, and by the death of John II., in 1479, the two ancient and rival kingdoms of Castile and Aragon were for ever consolidated in the monarchy of Spain. There had been some difficulty in adjusting the respective rights of the husband and wife over Castile. In the middle ages, it was customary for the more powerful sex to exercise all the rights which it derived from the weaker, as much in sovereignties as in private possessions. But the Castilians were determined to maintain the positive and distinct prerogatives of their queen, to which they attached the independence of their nation. A compromise therefore was concluded, by which, though, according to our notions, Ferdinand obtained more than a due share, he might consider himself as more strictly limited than his father had been in Navarre. The names of both were to appear jointly in their style, and upon the coin, the king's taking the precedence in respect of his sex. But, in the royal scutcheon, the arms of Castile were preferred on account of the kingdom's dignity. Isabella had the appointment of all civil offices in Castile; the nomination to spiritual benefices ran in the name of both. The government was to be conducted by the two conjointly when they were together, or by either singly, in the province where one or other might happen to reside (1). This partition was well preserved throughout the life of Isabel without mutual encroachments or jealousies. So rare an unanimity between persons thus circumstanced must be attributed to the superior qualities of that princess, who, while she maintained a constant good understanding with a very ambitious husband, never relaxed in the exercise of her paternal authority over the kingdoms of her ancestors.

Conquest of Granada.

Ferdinand and Isabella had no sooner quenched the flames of civil discord in Castile, than they determined to give an unequivocal proof to Europe of the vigour which the Spanish monarchy was to display under their government. For many years an armistice with the Moors of Granada had been uninterrupted. Neither John II. nor Henry IV. had been at leisure to think of aggressive hostilities; and the Moors themselves, a prey, like their Christian enemies, to civil war, and the feuds of their royal family, were content with the unmolested enjoyment of the finest province in the peninsula. If we may trust historians, the sovereigns of Granada were generally usurpers and tyrants. But I know not how to account for that vast populousness, that grandeur and magnificence which distinguished the Mohammedan kingdoms of Spain, without ascribing some measure of wisdom and beneficence to their governments. These southern provinces have

(1) Zurita, t. iv. f. 224. Mariana, l. xxiv. c. 8.

dwindled in later times; and in fact Spain itself is chiefly interesting to most travellers, for the monuments which a foreign and odious race of conquerors have left behind them. Granada was however disturbed by a series of revolutions about the time of Ferdinand's accession, which naturally encouraged his designs. The Moors, contrary to what might have been expected from their relative strength, were the aggressors by attacking a town in Andalusia (1). Predatory inroads of this nature had hitherto been only retaliated by the Christians. But Ferdinand was conscious that

1481 his resources extended to the conquest of Granada, the consummation of a struggle protracted through nearly eight centuries. Even in the last stage of the Moorish dominion, exposed on every side to invasion, enfeebled by a civil dissension, that led one party to abet the common enemy, Granada was not subdued without ten years of sanguinary and unremitting contest. Fertile beyond all the rest of Spain, that kingdom contained seventy walled towns; and the capital is said, almost two centuries before, to have been peopled by 200,000 inhabitants (2). Its resistance to such a force as that of Ferdinand is perhaps the best justification of the apparent negligence of earlier monarchs. But Granada was ultimately compelled to undergo the yoke. The city surrendered on the second of January 1492; an event glorious not only to Spain, but to Christendom; and which, in the political combat of the two religions, seemed almost to counterbalance the loss of Constantinople. It raised the name of Ferdinand and of the new monarchy which he governed to high estimation throughout Europe. Spain appeared an equal competitor with France in the lists of ambition. These great kingdoms had for some time felt the jealousy natural to emulous neighbours. The house of Aragon loudly complained of the treacherous policy of Louis XI. He had fomented the troubles of Castile, and given, not indeed an effectual aid, but all promises of support to the princess Joanna, the competitor of Isabel. Roussillon, a province belonging to Aragon, had been pledged to France by John II. for a sum of money. It would be tedious to relate the subsequent events, or to discuss their respective claims to its possession (3). At the accession of Ferdinand, Louis XI. still held Roussillon, and shewed little intention to resign it. But Charles VIII., eager to smooth every impediment to his Italian expedition, restored the province to Ferdinand in 1493. Whether, by such a sacrifice, he was able to lull the king of Aragon into acquiescence, while he dethroned his relation at Naples, and alarmed for a moment all Italy with the apprehension of French dominion, it is not within the limits of the present work to inquire.

(1) Zurita, t. iv. f. 314.
(2) Id. ibid.
(3) For these transactions, see Garnier, Hist. de France, or Gaillard, Rivalité de France et d'Espagne, t. iii. The latter is the most impartial French writer I have ever read, in matters where his own country is concerned.

CHAPTER V.

HISTORY OF GERMANY TO THE DIET OF WORMS IN 1495.

Sketch of German History under the Emperors of the House of Saxony—House of Franconia—Henry IV.—House of Swabia—Frederic Barbarossa—Fall of Henry the Lion—Frederic II.—Extinction of the House of Swabia—Changes in the Germanic Constitution—Electors—Territorial Sovereignty of the Princes—Rodolph of Hapsburgh—State of the Empire after his time—Causes of Decline of Imperial Power—House of Luxemburg—Charles IV.—Golden Bull—House of Austria—Frederic III.—Imperial Cities—Provincial States—Maximilian—Diet of Worms—Abolition of private Wars—Imperial Chamber—Aulic Council—Bohemia—Hungary—Switzerland.

Separation of Germany from France.

After the deposition of Charles the Fat in 888, which finally severed the connexion between France and Germany (1), Arnulf, an illegitimate descendant of Charlemagne, obtained the throne of the latter country, in which he was succeeded by his son Louis (2). But upon the death of this prince in 911, the German branch of that dynasty became extinct. There remained indeed Charles the Simple, acknowledged as king in some parts of France, but rejected in others, and possessing no personal claims to respect. The Germans therefore wisely determined to chuse a sovereign from among themselves. They were at this time divided into five nations, each under its own duke, and distinguished by difference of laws, as well as of origin; the Franks, whose territory, comprising Franconia and the modern Palatinate, was considered as the cradle of the empire, and who seem to have arrogated some superiority over the rest; the Swabians, the Bavarians, the Saxons, under which name the inhabitants of Lower Saxony alone and Westphalia were included; and the Lorrainers, who occupied the left bank of the Rhine as far as its termination.

Election of Conrad. 911.

The choice of these nations in their general assembly fell upon Conrad, duke of Franconia, according to some writers, or at least a man of high rank, and descended through females from Charlemagne (3).

House of Saxony.
Henry the Fowler. 919.
Otho I. 936.
Otho II. 973.
Otho III. 983.

Conrad dying without male issue, the crown of Germany was bestowed upon Henry the Fowler, duke of Saxony, ancestor of the three Othos, who followed him in direct succession. To Henry and to the first Otho, Germany was more indebted than to any sovereign since Charlemagne. The conquest of Italy, and recovery of

(1) There can be no question about this in a general sense. But several German writers of the time assert, that both Eudes and Charles the Simple, rival kings of France, acknowledged the feudal superiority of Arnulf. Charles, says Regino, regnum quod usurpaverat ex manu ejus percepit. Struvius, Corpus Hist. German. p. 202. 208.

(2) The German princes had some hesitation about the choice of Louis; but their partiality to the Carlovingian line prevailed. Struvius, p. 206.: quia reges Francorum semper ex uno genere procedebant, says an archbishop Hatto, in writing to the pope.

(3) Schmidt, Hist. des Allemands, t. ii. p. 228. Struvius, Corpus Historiæ Germanicæ, p. 210. The former of these writers does not consider Conrad as duke of Franconia.

the imperial title, are indeed the most brilliant trophies of Otho the Great; but he conferred far more unequivocal benefits upon his own country by completing what his father had begun, her liberation from the inroads of the Hungarians. Two marches, that of Misnia, erected by Henry the Fowler, and that of Austria, by Otho, were added to the Germanic territories by their victories (1).

A lineal succession of four descents without the least opposition, seems to shew that the Germans were disposed to consider their monarchy as fixed in the Saxon family. Otho II. and III. had been chosen each in his father's lifetime and during infancy. The formality of election subsisted at that time in every European kingdom; and the imperfect rights of birth acquired a ratification by public assent. If at least France and England were hereditary monarchies in the tenth century, the same may surely be said of Germany; since we find the lineal succession fully as well observed in the last as in the former. But upon the immature and unexpected decease of Otho III., a momentary opposition was offered to Henry duke of Bavaria, a collateral branch of the reigning family. He obtained the crown, however, by what contemporary historians call an hereditary title (2), and it is not until his death in 1024, that the house of Saxony was deemed to be extinguished.

Henry II.—1002.

House of Franconia. Conrad II. 1024.
Henry III. 1039.
Henry IV.—1056.
Henry V.—1106.

No person had now any pretensions that could interfere with the unbiassed suffrages of the nation; and accordingly a general assembly was determined by merit to elect Conrad, sirnamed the Salic, a nobleman of Franconia (3). From this prince sprang three successive emperors, Henry III., IV., and V. Perhaps the imperial prerogatives over that insubordinate confederacy never reached so high a point as in the reign of Henry III., the second emperor of the house of Franconia. It had been, as was natural, the object of all his predecessors not only to render their throne hereditary, which, in effect, the nation was willing to concede, but to surround it with authority sufficient to controul the leading vassals. These were the dukes of the four nations of Germany, Saxony, Bavaria, Swabia, and Franconia, and the three archbishops of the Rhenish cities, Mentz, Treves, and Cologne. Originally, as has been more fully shewn in another place, duchies, like counties, were temporary governments, bestowed at the pleasure of the crown. From

(1) Many towns in Germany, especially on the Saxon frontier, were built by Henry I., who is said to have compelled every ninth man to take up his residence in them. This had a remarkable tendency to promote the improvement of that territory, and, combined with the discovery of the gold and silver mines of Goslar under Otho I., rendered it the richest and most important part of the empire. Struvius, p. 225. and 251. Schmidt, t. ii. p. 322. Putter, Historical Development of the German Constitution, v. i. p. 115.

(2) A maximâ multitudine vox una respondit: Henricum, Christi adjutorio, et jure hæreditario, regnaturum. Ditmar apud Struvium, p. 273. See other passages quoted in the same place. Schmidt, t. ii. p. 410.

(3) Conrad was descended from a daughter of Otho the Great, and also from Conrad I. His first cousin was duke of Franconia. Struvius. Schmidt. Pfeffel.

this first stage they advanced to hereditary offices, and finally to patrimonial fiefs. But their progress was much slower in Germany than in France. Under the Saxon line of emperors, it appears probable, that although it was usual, and consonant to the prevailing notions of equity, to confer a duchy upon the nearest heir, yet no positive rule enforced this upon the emperor, and some instances of a contrary proceeding occurred (1). But, if the royal prerogative in this respect stood higher than in France, there was a countervailing principle, that prohibited the emperor from uniting a fief to his domain, or even retaining one which he had possessed before his accession. Thus Otho the Great granted away his duchy of Saxony, and Henry II. that of Bavaria. Otho the Great endeavoured to counteract the effects of this custom, by conferring the duchies that fell into his hands upon members of his own family. This policy, though apparently well conceived, proved of no advantage to Otho, his son and brother having mixed in several rebellions against him. It was revived, however, by Conrad II. and Henry III. The latter was invested by his father with the two duchies of Swabia and Bavaria. Upon his own accession, he retained the former for six years, and even the latter for a short time. The duchy of Franconia, which became vacant, he did not re-grant, but endeavoured to set a precedent of uniting fiefs to the domain. At another time, after sentence of forfeiture against the duke of Bavaria, he bestowed that great province on his wife, the empress Agnes (2). He put an end altogether to the form of popular concurrence, which had been usual when the investiture of a duchy was conferred: and even deposed dukes by the sentence of a few princes, without the consent of the diet (3). If we combine with these proofs of authority in the domestic administration of Henry III. his almost unlimited controul over papal elections, or rather the right of nomination that he acquired, we must consider him as the most absolute monarch in the annals of Germany.

Unfortunate reign of Henry IV.

These ambitious measures of Henry III. prepared fifty years of calamity for his son. It is easy to perceive that the misfortunes of Henry IV. were primarily occasioned by the jealousy with which repeated violations of their constitutional usages had inspired the nobility (4). The mere circumstance of Henry IV.'s minority, under the guardianship of a woman, was enough to dissipate whatever power his father had acquired. Hanno, archbishop of Mentz, carried the young king away by force from his mother, and governed Germany in his

(1) Schmidt, t. ii. p. 393. 403. Struvius, p. 214., supposes the hereditary rights of dukes to have commenced under Conrad I.; but Schmidt is perhaps a better authority; and Struvius afterwards mentions the refusal of Otho I. to grant the duchy of Bavaria to the sons of the last duke, which, however, excited a rebellion, p. 235.

(2) Schmidt, t. ii. p. 25. 37.

(3) Id. p. 207.

(4) In the very first year of Henry's reign, while he was but six years old, the princes of Saxony are said by Lambert of Aschaffenburg to have formed a conspiracy to depose him, out of resentment for the injuries they had sustained from his father. Struvius, p. 306. St. Marc, t. iii. p. 248.

name; till another archbishop, Adalbert of Bremen, obtained greater influence over him. Through the neglect of his education, Henry grew up with a character not well fitted to retrieve the mischief of so unprotected a minority; brave indeed, well natured, and affable, but dissolute beyond measure, and addicted to low and debauched company. He was soon involved in a desperate war with the Saxons, a nation valuing itself on its populousness and riches, jealous of the house of Franconia, who wore a crown that had belonged to their own dukes, and indignant at Henry's conduct in erecting fortresses throughout their country.

1072

In the progress of this war, many of the chief princes evinced an unwillingness to support the emperor (1). Notwithstanding this, it would probably have terminated, as other rebellions had done, with no permanent loss to either party. But in the middle of this contest, another far more memorable broke out with the Roman see, concerning ecclesiastical investitures. The motives of this famous quarrel will be explained in a different chapter of the present work. Its effect in Germany was ruinous to Henry. A sentence, not only of excommunication, but of deposition, which Gregory VII. pronounced against him, gave a pretence to all his enemies, secret as well as avowed, to withdraw their allegiance (2). At the head of these was Rodolph, duke of Swabia, whom an assembly of revolted princes raised to the throne. We may perceive, in the conditions of Rodolph's election, a symptom of the real principle that animated the German aristocracy against Henry IV. It was agreed that the kingdom should no longer be hereditary, nor conferred on the son of a reigning monarch, unless his merit should challenge the popular approbation (3). The pope strongly encouraged this plan of rendering the empire elective, by which he hoped either eventually to secure the nomination of its chief for the Holy See, or at least, by sowing the seed of civil dissensions in Germany, to render Italy more independent. Henry IV. however displayed greater abilities in his adversity than his early conduct had promised. In the last of several decisive battles, Rodolph, though victorious, was mortally wounded; and no one cared to take up a gauntlet which was to be won with so much trouble and uncertainty. The Germans were sufficiently disposed to submit;

1077

1080.

(1) Struvius. Schmidt.

(2) A party had been already formed, who were meditating to depose Henry. His excommunication came just in time to confirm their resolutions. It appears clearly, upon a little consideration of Henry IV.'s reign, that the ecclesiastical quarrel was only secondary in the eyes of Germany. The contest against him was a struggle of the aristocracy, jealous of the imperial prerogatives which Conrad II. and Henry III. had strained to the utmost. Those who were in rebellion against Henry were not pleased with Gregory VII. Bruno, author of a history of the Saxon war, a furious invective, manifests great dissatisfaction with the court of Rome, which he reproaches with dissimulation and venality.

(3) Hoc etiam ibi consensu communi comprobatum, Romani pontificis auctoritate est corroboratum, ut regia potestas nulli per hæreditatem, sicut antea fuit consuetudo, cederet, sed filius regis, etiamsi valdè dignus esset, per electionem spontaneam, non per successionis lineam, rex proveniret: si verò non esset dignus regis filius, vel si nolet eum populus, quem regem facere vellet, haberet in potestate populus. Bruno de Bello Saxonico, apud Struvium, p. 327.

but Rome persevered in her unrelenting hatred. At the close of Henry's long reign, she excited against him his eldest son, and after more than thirty years of hostility, had the satisfaction of wearing him down with misfortune, and casting out his body, as excommunicated, from its sepulchre.

Extinction of the house of Franconia.

In the reign of his son Henry V. there is no event worthy of much attention, except the termination of the great contest about investitures. At his death, in 1125, the male line of the Franconian emperors was at an end. Frederic duke of Swabia, grandson by his mother of Henry IV., had inherited their patrimonial estates, and seemed to represent their dynasty. But both the last emperors had so many enemies, and a disposition to render the crown elective prevailed so strongly among the leading princes, that Lothaire, duke of Saxony, was elevated to the throne, though rather in a tumultuous and irregular manner (1). Lothaire, who had been engaged in a revolt against Henry V., and the chief of a nation that bore an inveterate hatred to the house of Franconia, was the natural enemy of the new family that derived its importance and pretensions from that stock. It was the object of his reign, accordingly, to oppress the two brothers, Frederic and Conrad, of the Hohenstauffen or Swabian family. By this means he expected to secure the succession of the empire for his son-in-law. Henry, sirnamed the Proud, who married Lothaire's only child, was fourth in descent from Welf, son of Azon, marquis of Este, by Cunegonda, heiress of a distinguished family, the Welfs of Altorf in Swabia. Her son was invested with the duchy of Bavaria in 1071. His descendant, Henry the Proud, represented also, through his mother, the ancient dukes of Saxony, sirnamed Billung, from whom he derived the duchy of Luneburg. The wife of Lothaire transmitted to her daughter the patrimony of Henry the Fowler, consisting of Hanover and Brunswic. Besides this great dowery, Lothaire bestowed upon his son-in-law the duchy of Saxony, in addition to that of Bavaria (2).

1125

Election of Lothaire.

This amazing preponderance, however, tended to alienate the princes of Germany from Lothaire's views in favour of Henry; and the latter does not seem to have possessed abilities adequate to his eminent station. On the death of Lothaire in 1138, the partizans of the house of Swabia made a hasty and irregular election of Conrad, in which the Saxon faction found itself obliged to acquiesce (3). The new emperor availed

House of Swabia. Conrad III. 1138

(1) See an account of Lothaire's election by a contemporary writer, in Struvius, p. 357. See also proofs of the dissatisfaction of the aristocracy at the Franconian government. Schmidt, t. iii. p. 328. It was evidently their determination to render the empire truly elective: (Id. p. 335.) and perhaps we may date that fundamental principle of the Germanic constitution from the accession of Lothaire. Previously to that æra, birth seems to have given not only a fair title to preference, but a sort of inchoate right, as in France, Spain, and England. Lothaire signed a capitulation at his accession.

(2) Pfeffel, Abrégé Chronologique de l'Histoire d'Allemagne, t. i. p. 269. (Paris, 1777.) Gibbon's Antiquities of the House of Brunswic.

(3) Schmidt.

himself of the jealousy which Henry the Proud's aggrandizement had excited. Under pretence that two duchies could not legally be held by the same person, Henry was summoned to resign one of them; and on his refusal, the diet pronounced that he had incurred a forfeiture of both. Henry made but little resistance, and, before his death, which happened soon afterwards, saw himself stripped of all his hereditary as well as acquired possessions. Upon this occasion, the famous names of Guelf and Ghibelin were first heard, which were destined to keep alive the flame of civil dissension in far distant countries, and after their meaning had been forgotten. The Guelfs or Welfs were, as I have said, the ancestors of Henry, and the name has become a sort of patronymic in his family. The word Ghibelin is derived from Wibelung, a town in Franconia, whence the emperors of that line are said to have sprung. The house of Swabia were considered in Germany as representing that of Franconia; as the Guelfs may, without much impropriety, be deemed to represent the Saxon line (1).

Original of Guelfs and Ghibelins.

Frederic Barbarossa.

Though Conrad III. left a son, the choice of the electors fell, at his own request, upon his nephew Frederic Barbarossa (2). The most conspicuous events of this great emperor's life belong to the history of Italy. At home he was feared and respected; the imperial prerogatives stood as high during his reign, as, after their previous decline, it was possible for a single man to carry them (3). But the only circumstance which appears memorable enough for the present sketch, is the second fall of the Guelfs. Henry the Lion, son of Henry the Proud, had been restored by Conrad III. to his father's duchy of Saxony, resigning his claim to that of Bavaria, which had been conferred on the margrave of Austria. This renunciation, which indeed was only made in his name during childhood, did not prevent him from urging the emperor Frederic to restore the whole of his birthright; and Frederic, his first cousin, whose life he had saved in a sedition at Rome, was induced to comply with this request in 1156. Far from evincing that political jealousy which some writers impute to him, the emperor seems to have carried his generosity beyond the limits of prudence. For many years their union was apparently cordial. But whether it was that Henry took umbrage at part of Frederic's conduct (4), or that mere ambition rendered him ungrateful, he certainly abandoned his sovereign in a moment of distress, refusing to give any assistance in that expedition into Lombardy, which ended in the unsuccessful battle

Fall of Henry the Lion. 1178

(1) Struvius, p. 370. and 378.

(2) Idem.

(3) Pfeffel, p. 341.

(4) Frederic had obtained the succession of Welf, marquis of Tuscany, uncle of Henry the Lion, who probably considered himself as intitled to expect it. Schmidt, p. 427.

of Legnano. Frederic could not forgive this injury; and taking advantage of complaints which Henry's power and haughtiness had produced, summoned him to answer charges in a general diet. The duke refused to appear, and being adjudged contumacious, a sentence of confiscation, similar to that which ruined his father, fell upon his head; and the vast imperial fiefs that he possessed were shared among some potent enemies (1). He made an ineffectual resistance; like his father, he appears to have owed more to fortune than to nature; and after three years' exile, was obliged to remain content with the restoration of his alodial estates in Saxony. These, fifty years afterwards, were converted into imperial fiefs and became the two duchies of the house of Brunswic, the lineal representatives of Henry the Lion, and inheritors of the name of Guelf (2).

Notwithstanding the prevailing spirit of the German oligarchy, Frederic Barbarossa had found no difficulty in procuring the election of his son Henry, even during infancy, as his successor (3). The fall of Henry the Lion had greatly weakened the ducal authority in Saxony and Bavaria; the princes who acquired that title, especially in the former country, finding that the secular and spiritual nobility of the first class had taken the opportunity to raise themselves into an immediate dependence upon the empire. Henry VI. came, therefore, to the crown with considerable advantages in respect of prerogative; and these inspired him with a bold scheme of declaring the empire hereditary. One is more surprised to find that he had no contemptible prospect of success in this attempt; fifty-two princes, and even what appears hardly credible, the see of Rome under Clement III. having been induced to concur in it. But the Saxons made so vigorous an opposition, that Henry did not think it advisable to persevere (4). He procured, however, the election of his son Frederic, an infant only two years old. But the emperor dying almost immediately, a powerful body of princes, supported by Pope Innocent III., were desirous to withdraw their consent. Philip duke of Swabia, the late king's brother, unable to secure his nephew's succession, brought about his own election by one party, while another chose Otho of Brunswic, younger son of Henry the Lion. This double election renewed the rivalry between the Guelfs and Ghibelins, and threw Germany into confusion for several years. Philip, whose pretensions appear to be the more legitimate of the two, gained ground upon his adversary, notwith-

Henry VI. 1190.

Philip and Otho IV. 1197.

(1) Putter, in his Historical Development of the Constitution of the German Empire, is inclined to consider Henry the Lion as sacrificed to the emperor's jealousy of the Guelfs, and as illegally proscribed by the diet. But the provocations he had given Frederic are undeniable; and without pretending to decide on a question of German history, I do not see that there was any precipitancy or manifest breach of justice in the course of proceedings against him. Schmidt, Pfeffel, and Struvius do not represent the condemnation of Henry as unjust.

(2) Putter, p. 220. (3) Struvius, p. 418.

(4) Struvius, p. 424. Impetravit à subditis, ut, cessante pristinâ Palatinorum electione, imperium in ipsius posteritatem, distinctâ proximorum successione, transiret, et sic in ipso terminus esset electionis, principiumque successivæ dignitatis. Gervas. Tilburions. Ibidem.

1208 standing the opposition of the pope, till he was assassinated, in consequence of a private resentment. Otho IV. reaped the benefit of a crime in which he did not participate, and became for some years undisputed sovereign. But, having offended the pope by not entirely abandoning his imperial rights over Italy, he had, in the latter part of his reign, to contend against Frederic, son of Henry VI., who, having grown up to manhood, came into Germany as heir of the house of Swabia, and, what was not very usual in his own history, or that of his family, the favoured candidate of the Holy See. Otho IV. had been almost entirely deserted, except by his natural subjects, when his death, in 1218, removed every difficulty, and left Frederic II. in the peaceable possession of Germany.

Frederic II. The eventful life of Frederic II. was chiefly passed in Italy. To preserve his hereditary dominions, and chastise the Lombard cities, were the leading objects of his political and military career. He paid therefore but little attention to Germany, from which it was in vain for any emperor to expect effectual assistance towards objects of his own. Careless of prerogatives which it seemed hardly worth an effort to preserve, he sanctioned the independence of the princes, which may be properly dated from his reign. In return, they readily elected his son Henry king of the Romans; and, on his being implicated in a rebellion, deposed him with equal readiness, and substituted his brother Conrad at the emperor's request (1). But in the latter part of Frederic's reign, the deadly hatred of Rome penetrated beyond the Alps. After his solemn deposition in the council of Lyons, he was incapable, in ecclesiastical eyes, of holding the imperial sceptre. Innocent IV. found however some difficulty in setting up a rival emperor. Henry, landgrave of Thuringia, made an indifferent figure in this character. Upon his death, William, count of Holland, was chosen by the party adverse to Frederic and his son Conrad; and, after the emperor's death, he had some success against the latter. It is hard indeed to say that any one was actually sovereign for twenty-two years that followed the death of Frederic II.; a period of contested title and universal anarchy, which is usually denominated the grand interregnum. On the decease of William of Holland, in 1256, a schism among the electors produced the double choice of Richard earl of Cornwall, and Alfonso X. king of Castile. It seems not easy to determine which of these candidates had a legal majority of votes (2), but the subsequent recognition of

Consequences of the council of Lyons.

1245

1246

Grand interregnum. 1250—1272

Richard of Cornwall.

(1) Struvius, p. 457.

(2) The election ought legally to have been made at Frankfort. But the elector of Treves, having got possession of the town, shut out the archbishops of Mentz and Cologne, and the count palatine, on pretence of apprehending violence. They met under the walls, and there elected Richard. Afterwards Alfonso was chosen by the votes of Treves, Saxony and Brandenburg. Historians differ about the vote of Ottocar, king of Bohemia, which would turn the

almost all Germany, and a sort of possession evidenced by public acts, which have been held valid, as well as the general consent of contemporaries, may justify us in adding Richard to the imperial list. The choice indeed was ridiculous, as he possessed no talents which could compensate for his want of power; but the electors attained their objects: to perpetuate a state of confusion by which their own independence was consolidated, and to plunder without scruple a man, like Didius at Rome, rich and foolish enough to purchase the first place upon earth.

State of the Germanic constitution.

That place indeed was now become a mockery of greatness. For more than two centuries, notwithstanding the temporary influence of Frederic Barbarossa and his son, the imperial authority had been in a state of gradual decay. From the time of Frederic II., it had bordered upon absolute insignificance; and the more prudent German princes were slow to canvass for a dignity so little accompanied by respect. The changes wrought in the Germanic constitution during the period of the Swabian emperors chiefly consist in the establishment of an oligarchy of electors, and of the territorial sovereignty of the princes.

Electors.

1. At the extinction of the Franconian line by the death of Henry V., it was determined by the German nobility to make their empire practically elective, admitting no right, or even natural pretension, in the eldest son of a reigning sovereign. Their choice upon former occasions had been made by free and general suffrage. But it may be presumed, that each nation voted unanimously, and according to the disposition of its duke. It is probable too that the leaders, after discussing in previous deliberations the merits of the several candidates, submitted their own resolutions to the assembly, which would generally concur in them without hesitation. At the election of Lothaire, in 1124, we find an evident instance of this previous choice, or, as it was called, *prætaxation*, from which the electoral college of Germany has been derived. The princes, it is said, trusted the choice of an emperor to ten persons, in whose judgment they promised to acquiesce (1). This precedent was, in all likelihood, followed at all subsequent elections. The proofs indeed are not perfectly clear. But in the famous privilege of Austria, granted by Frederic I. in 1156, he bestows a rank upon the newly-created duke of that country, immediately after the electing princes (post principes electores) (2); a strong presumption that the right of prætaxation

scale. Some time after the election, it is certain that he was on the side of Richard. Perhaps we may collect from the opposite statement in Struvius, p. 504., that the proxies of Ottocar had voted for Alfonso, and that he did not think fit to recognize their act.

There can be no doubt that Richard was *de facto* sovereign of Germany; and it is singular that Struvius should assert the contrary, on the authority of an instrument of Rodolph, which expressly designates him king, per quondam Richardum regem illustrem. Struv. p. 502.

(1) Struv. p. 357. Schmidt, t. iii. p. 324.

(2) Schmidt, t. iii. p. 390.

was not only established, but limited to a few definite persons. In a letter of Innocent III., concerning the double election of Philip and Otho, in 1198, he asserts the latter to have had a majority in his favour of those to whom the right of election chiefly belongs (ad quos principaliter spectat electio) (1). And a law of Otho, in 1208, if it be genuine, appears to fix the exclusive privilege of the seven electors (2). Nevertheless so obscure is this important part of the Germanic system, that we find four ecclesiastical and two secular princes concurring with the regular electors in the act, as reported by a contemporary writer, that creates Conrad, son of Frederic II., king of the Romans (3). This, however, may have been an irregular deviation from the principle already established. But it is admitted, that all the princes retained, at least during the twelfth century, their consenting suffrage; like the laity in an episcopal election, whose approbation continued to be necessary, long after the real power of choice had been withdrawn from them (4).

It is not easy to account for all the circumstances that gave to seven spiritual and temporal princes this distinguished pre-eminence. The three archbishops, Mentz, Treves, and Cologne, were always indeed at the head of the German church. But the secular electors should naturally have been the dukes of four nations; Saxony, Franconia, Swabia, and Bavaria. We find, however, only the first of these in the undisputed exercise of a vote. It seems probable, that, when the electoral princes came to be distinguished from the rest, their privilege was considered as peculiarly connected with the discharge of one of the great offices in the imperial court. These were attached, as early as the diet of Mentz, in 1184, to the four electors, who ever afterwards possessed them: the duke of Saxony having then officiated as arch-marshal, the count palatine of the Rhine as arch-steward, the king of Bohemia as arch-cup bearer, and the margrave of Brandenburg as arch-chamberlain of the empire (5). But it still continues a problem, why the three latter offices, with the electoral capacity as their incident, should not rather have been granted to the dukes of Franconia, Swabia, and Bavaria. I have seen no adequate explanation of this circumstance; which may perhaps lead us to presume, that the right of pre-election was not quite so soon confined to the precise number of seven princes. The final extinction of two great original duchies, Franconia and Swabia, in the thirteenth century, left the electoral rights of the count palatine and the margrave of Brandenburg beyond dispute. But the dukes of

(1) Pfeffel, p. 360.
(2) Schmidt, t. iv. p. 80.
(3) This is not mentioned in Struvius, or the other German writers. But Denina (Rivoluzioni d' Italia, l. ix. c. 9.) quotes the style of the act of election from the Chronicle of Francis Pippin.
(4) This is manifest by the various passages relating to the elections of Philip and Otho, quoted by Struvius, p. 428. 430. See too Pfeffel, ubi supra. Schmidt, t. iv. p. 79.
(5) Schmidt, t. iv. p. 78.

Bavaria continued to claim a vote in opposition to the kings of Bohemia. At the election of Rodolph in 1272, the two brothers of the house of Wittelsbach voted separately, as count palatine, and duke of Lower Bavaria. Ottocar was excluded upon this occasion; and it was not till 1290 that the suffrage of Bohemia was fully recognized. The Palatine and Bavarian branches, however, continued to enjoy their family vote conjointly, by a determination of Rodolph; upon which Louis of Bavaria slightly innovated, by rendering the suffrage alternate. But the Golden Bull of Charles IV. put an end to all doubts on the rights of electoral houses, and absolutely excluded Bavaria from voting. The limitation to seven electors, first perhaps fixed by accident, came to be invested with a sort of mysterious importance, and certainly was considered, until times comparatively recent, as a fundamental law of the empire (1).

Princes and untitled inferior nobility.

2. It might appear natural to expect that an oligarchy of seven persons, who had thus excluded their equals from all share in the election of a sovereign, would assume still greater authority, and trespass farther upon the less powerful vassals of the empire. But while the electors were establishing their peculiar privilege, the class immediately inferior raised itself by important acquisitions of power. The German dukes, even after they became hereditary, did not succeed in compelling the chief nobility within their limits to hold their lands in fief, so completely as the peers of France had done. The nobles of Swabia refused to follow their duke into the field against the emperor Conrad II. (2). Of this aristocracy the superior class were denominated princes; an appellation which, after the eleventh century, distinguished them from the untitled nobility, most of whom were their vassals. They were constituent parts of all diets, and though gradually deprived of their original participation in electing an emperor, possessed, in all other respects, the same rights as the dukes, or electors. Some of them were fully equal to the electors, in birth as well as extent of dominions; such as the princely houses of Austria, Hesse, Brunswic and Misnia. By the division of Henry the Lion's vast territories (3), and by the absolute extinction of the Swabian family in the following century, a great many princes acquired additional weight. Of the ancient duchies, only Saxony and Bavaria remained; the former of which especially was so dismembered, that it was vain to attempt any renewal of the ducal jurisdiction. That of the emperor, formerly exercised by the counts palatine, went almost equally into disuse, during the contest between Philip and Otho IV. The princes accordingly had acted with sovereign independence within their own fiefs before

(1) Schmidt, t. iv. p. 78. 568. Putter, p. 274. Pfeffel, p. 435. 565. Struvius, p. 511.

(2) Pfeffel, p. 209.

(3) See the arrangements made in consequence of Henry's forfeiture, which gave quite a new face to Germany; in Pfeffel, p. 234., also p. 437.

the reign of Frederic II.; but the legal recognition of their immunities was reserved for two edicts of that emperor; one, in 1220, relating to ecclesiastical, and the other, in 1232, to secular princes. By these he engaged neither to levy the customary imperial dues, nor to permit the jurisdiction of the palatine judges, within the limits of a state of the empire (1); concessions that amounted to little less than an abdication of his own sovereignty. From this epoch the territorial independence of the states may be dated.

A class of titled nobility, inferior to the princes, were the counts of the empire, who seem to have been separated from the former in the twelfth century, and to have lost at the same time their right of voting in the diets (2). In some parts of Germany, chiefly in Franconia and upon the Rhine, there always existed a very numerous body of lower nobility; untitled, at least till modern times, but subject to no superior except the emperor. These are supposed to have become *immediate*, after the destruction of the house of Swabia, within whose duchies they had been comprehended (3).

Election of Rodolph of Hapsburg. 1272.

A short interval elapsed after the death of Richard of Cornwall, before the electors could be induced, by the deplorable state of confusion into which Germany had fallen, to fill the imperial throne. Their choice was however the best that could have been made. It fell upon Rodolph count of Hapsburg, a prince of very ancient family, and of considerable possessions as well in Switzerland as upon each bank of the Upper Rhine, but not sufficiently powerful to alarm the electoral oligarchy. Rodolph was brave, active, and just; but his characteristic quality appears to have been good sense, and judgment of the circumstances in which he was placed. Of this he gave a signal proof in relinquishing the favourite project of so many preceding emperors, and leaving Italy altogether to itself. At home he manifested a vigilant spirit in administering justice, and is said to have destroyed seventy strongholds of noble robbers in Thuringia and other parts, bringing many of the criminals to capital punishment (4). But he wisely avoided giving offence to the more powerful princes; and during his reign, there were hardly any rebellions in Germany.

Investment of his son Albert with duchy of Austria.

It was a very reasonable object of every emperor to aggrandize his family by investing his near kindred with vacant fiefs; but no one was so fortunate in his opportunities as Rodolph. At his accession, Austria, Styria, and Carniola were in the hands of Ottocar, king of Bohemia. These extensive and fertile countries had been formed into a march or margraviate, after the victories of Otho the Great over the Hungarians. Frederic Barbarossa erected them into a duchy, with

(1) Pfeffel, p. 384. Putter, p. 233.

(2) In the instruments relating to the election of Otho IV., the princes sign their names, Ego N. elegi et subscripsi. But the counts only as follows: Ego N. consensi et subscripsi. Pfeffel, p. 360.

(3) Pfeffel, p. 445. Putter, p. 254. Struvius, p. 511.

(4) Struvius, p. 530. Coxe's Hist. of House of Austria, p. 57. This valuable work contains a full and interesting account of Rodolph's reign.

many distinguished privileges, especially that of female succession, hitherto unknown in the feudal principalities of Germany (1). Upon the extinction of the house of Bamberg, which had enjoyed this duchy, it was granted by Frederic II. to a cousin of his own name; after whose death a disputed succession gave rise to several changes, and ultimately enabled Ottocar to gain possession of the country. Against this king of Bohemia Rodolph waged two successful wars, and recovered the Austrian provinces, which, as vacant fiefs, he conferred, with the consent of the diet, upon his son Albert (2). 1283

State of the empire after Rodolph.

Notwithstanding the merit and popularity of Rodolph, the electors refused to chuse his son king of the Romans in his life-time; and, after his death, determined to avoid the appearance of hereditary succession, put Adolphus of Nassau upon the throne. There is very little to attract notice in the domestic history of the empire during the next two centuries. From Adolphus to Sigismund, every emperor had either to struggle against a competitor, claiming the majority of votes at his election, or against a combination of the electors to dethrone him. The imperial authority became more and more ineffective; yet it was frequently made a subject of reproach against the emperors, that they did not maintain a sovereignty to which no one was disposed to submit.

Adolphus. 1292.
Albert I. 1298.
Henry VII. 1308.
Louis IV. 1314.
Charles IV. 1347.
Wenceslaus. 1378.
Robert. 1400.
Sigismund. 1414.

It may appear surprising, that the Germanic confederacy under the nominal supremacy of an emperor should have been preserved in circumstances apparently so calculated to dissolve it. But, besides the natural effect of prejudice and a famous name, there were sufficient reasons to induce the electors to preserve a form of government in which they bore so decided a sway. Accident had in a considerable degree restricted the electoral suffrages to seven princes. Without the college, there were houses more substantially powerful than any within it. The duchy of Saxony had been subdivided by repeated partitions among children, till the electoral right was vested in a prince who possessed only the small territory of Wittenberg. The great families of Austria, Bavaria, and Luxemburg, though not electoral, were the real heads of the German body; and though the two former lost much of their influence for

(1) The privileges of Austria were granted to the margrave Henry in 1156, by way of indemnity for his restitution of Bavaria to Henry the Lion. The territory between the Inn and the Ems was separated from the latter province, and annexed to Austria at this time. The dukes of Austria are declared equal in rank to the palatine archdukes (archi-ducibus palatinis). This expression gave a hint to the duke Rodolph IV. to assume the title of archduke of Austria. Schmidt, t. iii. p. 390. Frederic II. even created the duke of Austria king: a very curious fact, though neither he nor his successors ever assumed the title. Struvius, p. 463. The instrument runs as follows: Ducatus Austriæ et Styriæ, cum pertinentiis et terminis suis quot hactenus habuit, ad nomen et honorem regium transferentes, te hactenus ducatuum prædictorum ducem, de potestatis nostræ plenitudine et magnificentiâ speciali promovemus in regem, per libertates et jura prædictum regnum tuum præsentis epigrammatis auctoritate donantes, quæ regiam deceant dignitatem: ut tamen ex honore quem tibi libenter addimus, nihil honoris et juris nostri diadematis aut imperii subtrahatur.

(2) Struvius, p. 525. Schmidt. Coxe.

a time through the pernicious custom of partition, the empire seldom looked for its head to any other house than one of these three.

Custom of partition.

While the duchies and counties of Germany retained their original character of offices or governments, they were of course, even though considered as hereditary, not subject to partition among children. When they acquired the nature of fiefs, it was still consonant to the principles of a feudal tenure, that the eldest son should inherit according to the law of primogeniture; an inferior provision or apanage, at most, being reserved for the younger children. The law of England favoured the eldest exclusively; that of France gave him great advantages. But in Germany a different rule began to prevail about the thirteenth century (1). An equal partition of the inheritance, without the least regard to priority of birth, was the general law of its principalities. Sometimes this was effected by undivided possession, or tenancy in common, the brothers residing together, and reigning jointly. This tended to preserve the integrity of dominion; but, as it was frequently incommodious, a more usual practice was to divide the territory. From such partitions are derived those numerous independent principalities of the same house, many of which still subsist in Germany. In 1589, there were eight reigning princes of the Palatine family; and fourteen, in 1675, of that of Saxony (2). Originally, these partitions were in general absolute and without reversion; but, as their effect in weakening families became evident, a practice was introduced of making compacts of reciprocal succession, by which a fief was prevented from escheating to the empire, until all the male posterity of the first feudatory should be extinct. Thus, while the German empire survived, all the princes of Hesse or of Saxony had reciprocal contingencies of succession, or what our lawyers call cross-remainders, to each other's dominions. A different system was gradually adopted. By the Golden Bull of Charles IV., the electoral territory, that is, the particular district to which the electoral suffrage was inseparably attached, became incapable of partition, and was to descend to the eldest son. In the fifteenth century, the present house of Brandenburg set the first example of establishing primogeniture by law; the principalities of Anspach and Bayreuth were dismembered from it for the benefit of younger branches; but it was declared that all the other dominions of the family should for the future belong exclusively to the reigning elector. This politic measure was adopted in several other families; but, even in the sixteenth century, the prejudice was not removed, and some German princes denounced curses on their posterity, if they should introduce the impious custom of primogeniture (3).

(1) Schmidt, t. iv. p. 66. Pfeffel, p. 289., maintains that partitions were not introduced till the latter end of the thirteenth century. This may be true, as a general rule; but I find the house of Baden divided into two branches, Baden and Hochberg, in 1190, with rights of mutual reversion.

(2) Pfeffel, ibid. Putter, p. 189.

(3) Putter, p. 290.

Weakened by these subdivisions, the principalities of Germany in the fourteenth and fifteenth centuries shrink to a more and more diminutive size in the scale of nations. But one family, the most illustrious of the former age, was less exposed to this enfeebling system. Henry VII. count of Luxemburg, a man of much more personal merit than hereditary importance, was elevated to the empire in 1308. Most part of his short reign he passed in Italy; but he had a fortunate opportunity of obtaining the crown of Bohemia for his son. John king of Bohemia did not himself wear the imperial crown: but three of his descendants possessed it with less interruption than could have been expected. His son Charles IV. succeeded Louis of Bavaria in 1347; not indeed without opposition, for a double election and a civil war were matters of course in Germany. Charles IV. has been treated with more derision by his contemporaries, and consequently by later writers, than almost any prince in history; yet he was remarkably successful in the only objects that he seriously pursued. Deficient in personal courage, insensible of humiliation, bending without shame to the pope, to the Italians, to the electors, so poor and so little reverenced as to be arrested by a butcher at Worms for want of paying his demand, Charles IV. affords a proof that a certain dexterity and cold-blooded perseverance may occasionally supply, in a sovereign, the want of more respectable qualities. He has been reproached with neglecting the empire. But he never designed to trouble himself about the empire, except for his private ends. He did not neglect the kingdom of Bohemia, to which he almost seemed to render Germany a province. Bohemia had been long considered as a fief of the empire, and indeed could pretend to an electoral vote by no other title. Charles, however, gave the states by law the right of chusing a king, on the extinction of the royal family, which seems derogatory to the imperial prerogative (1). It was much more material that, upon acquiring Brandenburg, partly by conquest, and partly by a compact of succession in 1373, he not only invested his sons with it, which was comformable to usage, but annexed that electorate for ever to the kingdom of Bohemia (2). He constantly resided at Prague, where he founded a celebrated university, and embellished the city with buildings. This kingdom, augmented also during his reign by the acquisition of Silesia, he bequeathed to his son Wenceslaus, for whom, by pliancy towards the electors and the court of Rome, he had procured, against all recent example, the imperial succession (3).

House of Luxemburg.

The reign of Charles IV. is distinguished in the constitutional history of the empire by his Golden Bull; an instrument which finally ascertained the prerogatives of the electoral college. The Golden Bull terminated the disputes which

Golden Bull. 1355

(1) Struvius, p. 641.
(2) Pfeffel. p. 575. Schmidt, b. iv. p. 595.
(3) Struvius, p. 637.

had arisen between different members of the same house as to their right of suffrage, which was declared inherent in certain definite territories. The number was absolutely restrained to seven. The place of legal imperial elections was fixed at Frankfort; of coronations, at Aix-la-Chapelle; and the latter ceremony was to be performed by the archbishop of Cologne. These regulations, though consonant to ancient usage, had not always been observed, and their neglect had sometimes excited questions as to the validity of elections. The dignity of elector was enhanced by the Golden Bull as highly as an imperial edict could carry it; they were declared equal to kings, and conspiracy against their persons incurred the penalty of high treason (1). Many other privileges are granted to render them more completely sovereign within their dominions. It seems extraordinary that Charles should have voluntarily elevated an oligarchy from whose pretensions his predecessors had frequently suffered injury. But he had more to apprehend from the two great families of Bavaria and Austria, whom he relatively depressed by giving such a preponderance to the seven electors, than from any members of the college. By this compact with Brandenburg, he had a fair prospect of adding a second vote to his own; and there was more room for intrigue and management, which Charles always preferred to arms, with a small number, than with the whole body of princes.

Deposition of Wenceslaus.

The next reign, nevertheless, evinced the danger of investing the electors with such preponderating authority. Wenceslaus, a supine and voluptuous man, less respected, and more negligent of Germany, if possible, than his father, was regularly deposed by a majority of the electoral college, in 1400. This right, if it is to be considered as a right, they had already used against Adolphus of Nassau in 1298, and against Louis of Bavaria in 1346. They chose Robert Count Palatine instead of Wenceslaus; and though the latter did not cease to have some adherents, Robert has generally been counted among the lawful emperors (2). Upon his death, the empire returned to the house of Luxembourg; Wenceslaus himself waving his rights in favour of his brother Sigismund, king of Hungary (3).

House of Austria.

The house of Austria had hitherto given but two emperors to Germany, Rodolph its founder, and his son Albert, whom a successful rebellion elevated in the place of Adolphus. Upon the death of Henry of Luxemburg, in 1313, Fre-

(1) Pfeffel, p. 565. Putter, p. 271. Schmidt, t. iv. p. 566. The Golden Bull not only fixed the Palatine vote, in absolute exclusion of Bavaria, but settled a controversy of long standing between the two branches of the house of Saxony, Wittenberg and Lauenberg, in favour of the former.

(2) Many of the cities, besides some princes, continued to recognize Wenceslaus throughout the life of Robert: and the latter was so much considered as an usurper by foreign states, that his ambassadors were refused admittance at the council of Pisa. Struvius, p. 658.

(3) This election of Sigismund was not uncontested: Josse, or Jodocus, margrave of Moravia, having been chosen, as far as appears, by a legal majority. However, his death within three months removed the difficulty; and Josse, who was not crowned at Frankfort, has never been reckoned among the emperors, though modern critics agree that his title was legitimate. Struv. p. 684. Pfeffel, p. 612.

deric, son of Albert, disputed the election of Louis duke of Bavaria, alleging a majority of genuine votes. This produced a civil war, in which the Austrian party were entirely worsted. Though they advanced no pretensions to the imperial dignity during the rest of the fourteenth century, the princes of that line added to their possessions Carinthia, Istria, and the Tyrol. As a counterbalance to these acquisitions, they lost a great part of their ancient inheritance by unsuccessful wars with the Swiss. According to the custom of partition, so injurious to princely houses, their dominions were divided among three branches: one reigning in Austria, a second in Styria and the adjacent provinces, a third in the Tyrol and Alsace. This had in a considerable degree eclipsed the glory of the house of Hapsburg. But it was now its destiny to revive, and to enter upon a career of prosperity, which has never since been permanently interrupted. Albert, duke of Austria, who had married Sigismund's only daughter, the queen of Hungary and Bohemia, was raised to the imperial throne upon the death of his father-in-law, in 1437. He died in two years, leaving his wife pregnant with a son, Ladislaus Posthumus, who afterwards reigned in the two kingdoms just mentioned; and the choice of the electors fell upon Frederic, duke of Styria, second cousin of the last emperor, from whose posterity it never departed, except in a single instance, upon the extinction of his male line in 1740.

Albert II. 1438.

Frederic III. reigned fifty-three years; a longer period than any of his predecessors; and his personal character was more insignificant. With better fortune than could be expected, considering both these circumstances, he escaped any overt attempt to depose him, though such a project was sometimes in agitation. He reigned during an interesting age, full of remarkable events, and big with others of more leading importance. The destruction of the Greek empire, and appearance of the victorious crescent upon the Danube, gave an unhappy distinction to the earlier years of his reign, and displayed his mean and pusillanimous character in circumstances which demanded a hero. At a later season he was drawn into contentions with France and Burgundy, which ultimately produced a new and more general combination of European politics. Frederic, always poor and scarcely able to protect himself in Austria from the seditions of his subjects, or the inroads of the king of Hungary, was yet another founder of his family, and left their fortunes incomparably more prosperous than at his accession. The marriage of his son Maximilian with the heiress of Burgundy began that aggrandizement of the house of Austria which Frederic seems to have anticipated (1).

Reign of Frederic III. 1440—1493.

(1) The famous device of Austria, A. E. I. O. U. was first used by Frederic III., who adopted it on his plate, books, and buildings. These initials stand for, Austriæ Est Imperare Orbi Universo; or, in German, Alles Erdreich Ist Osterreich Unterthan: A bold assumption for a man who was not safe in

The electors, who had lost a good deal of their former spirit, and were grown sensible of the necessity of chusing a powerful sovereign, made no opposition to Maximilian's becoming king of the Romans in his father's lifetime. The Austrian provinces were reunited, either under Frederic, or in the first years of Maximilian; so that, at the close of that period which we denominate the Middle Ages, the German empire, sustained by the patrimonial dominions of its chief, became again considerable in the scale of nations, and capable of preserving a balance between the ambitious monarchies of France and Spain.

Progress of free imperial cities.

The period between Rodolph and Frederic III. is distinguished by no circumstance so interesting as the prosperous state of the free imperial cities, which had attained their maturity about the commencement of that interval. We find the cities of Germany, in the tenth century, divided into such as depended immediately upon the empire, which were usually governed by their bishop as imperial vicar, and such as were included in the territories of the dukes and counts (1). Some of the former, lying principally upon the Rhine and in Franconia, acquired a certain degree of importance before the expiration of the eleventh century. Worms and Cologne manifested a zealous attachment to Henry IV., whom they supported in despite of their bishops (2). His son Henry V. granted privileges of enfranchisement to the inferior townsmen or artizans, who had hitherto been distinguished from the upper class of freemen, and particularly relieved them from oppressive usages, which either gave the whole of their moveable goods to the lord upon their decease, or at least enabled him to seize the best chattel as his heriot (3). He took away the temporal authority of the bishop, at least in several instances, and restored the cities to a more immediate dependence upon the empire. The citizens were classed in companies according to their several occupations; an institution which was speedily adopted in other commercial countries. It does not appear that any German city had obtained, under this emperor, those privileges of chusing its own magistrates which were conceded about the same time, in a few instances, to those of France (4). Gradually, however, they began to elect councils of citizens, as a sort of senate and magistracy. This innovation might perhaps take place as early as the reign of Frederic I. (5); at least it was fully established in that of

an inch of his dominions. Struvius, p. 722. He confirmed the archducal title of his family, which might seem implied in the original grant of Frederic I.; and bestowed other high privileges above all princes of the empire. These are enumerated in Coxe's House of Austria, vol. i. p. 263.

(1) Pfeffel, p. 187. The Othos adopted the same policy in Germany which they had introduced in Italy, conferring the temporal government of cities upon the bishops; probably as a counterbalance to the lay aristocracy. Putter, p. 136. Struvius, p. 252.

(2) Schmidt, t. iii. p. 239.

(3) Idem, p. 242. Pfeffel, p. 293. Dumont, Corps Diplomatique, t. i. p. 64.

(4) Schmidt, p. 245.

(5) In the charter granted by Frederic I. to Spire in 1182, confirming and enlarging that of Henry V., though no express mention is made of any municipal jurisdiction, yet it seems implied in the following words: Causam in civitate jam lite contestatam non episcopus aut alia potestas extra civitatem determinari compellet. Dumont, p. 108.

his grandson. They were at first only assistants to the imperial or episcopal bailiff, who probably continued to administer criminal justice. But in the thirteenth century, the citizens, grown richer and stronger, either purchased the jurisdiction, or usurped it through the lord's neglect, or drove out the bailiff by force (1). The great revolution in Franconia and Swabia, occasioned by the fall of the Hohenstauffen family, completed the victory of the cities. Those which had depended upon mediate lords became immediately connected with the empire; and with the empire in its state of feebleness, when an occasional present of money would easily induce its chief to acquiesce in any claims of immunity which the citizens might prefer.

It was a natural consequence of the importance which the free citizens had reached, and of their immediacy, that they were admitted to a place in the diets, or general meetings of the confederacy. They were tacitly acknowledged to be equally sovereign with the electors and princes. No proof exists of any law, by which they were adopted into the diet. We find it said, that Rodolph of Hapsburg, in 1291, renewed his oath with the princes, lords, and cities. Under the emperor Henry VII., there is unequivocal mention of the three orders composing the diet; electors, princes, and deputies from cities (2). And, in 1344, they appear as a third distinct college in the diet of Frankfort (3).

The inhabitants of these free cities always preserved their respect for the emperor, and gave him much less vexation than his other subjects. He was indeed their natural friend. But their nobility and prelates were their natural enemies; and the western parts of Germany were the scenes of irreconcileable warfare between the possessors of fortified castles and the inhabitants of fortified cities. Each party was frequently the aggressor. The nobles were too often mere robbers, who lived upon the plunder of travellers. But the citizens were almost equally inattentive to the rights of others. It was their policy to offer the privileges of burghership to all strangers. The peasantry of feudal lords, flying to a neighbouring town, found an asylum constantly open. A multitude of aliens, thus seeking as it were sanctuary, dwelt in the suburbs or liberties, between the city walls and the palisades which bounded the territory. Hence they were called Pfahlburgher, or burgesses of the palisades; and this encroachment on the rights of the nobility was positively, but vainly, prohibited by several imperial edicts, especially the Golden Bull. Another class were the Ausburger, or out-burghers, who had been admitted to privileges of citizenship, though resident at a distance, and pretended in consequence to be exempted from all dues to their original feudal su-

(1) Schmidt, t. iv. p. 96. Pfeffel, p. 441.

(2) Mansit ibi rex sex hebdomadibus cum principibus electoribus et aliis principibus *et civitatum nuntiis*, de suo transitu et de præstandis servitiis in Italiam disponendo. Auctor apud Schmidt, t. vi. p. 31.

(3) Pfeffel, p. 552.

periors. If a lord resisted so unreasonable a claim, he incurred the danger of bringing down upon himself the vengeance of the citizens. These out-burghers are in general classed under the general name of Pfahlburger by contemporary writers (1).

Leagues of the cities.

As the towns were conscious of the hatred which the nobility bore towards them, it was their interest to make a common cause, and render mutual assistance. From this necessity of maintaining, by united exertions, their general liberty, the German cities never suffered the petty jealousies, which might no doubt exist among them, to ripen into such deadly feuds as sullied the glory, and ultimately destroyed the freedom of Lombardy. They withstood the bishops and barons by confederacies of their own, framed expressly to secure their commerce against rapine, or unjust exactions of toll. More than sixty cities, with three ecclesiastical electors at their head, formed the league of the Rhine in 1255, to repel the inferior nobility, who, having now become immediate, abused that independence by perpetual robberies (2). The Hanseatic Union owes its origin to no other cause, and may be traced perhaps to rather a higher date. About the year 1370, a league was formed, which, though it did not continue so long, seems to have produced more striking effects in Germany. The cities of Swabia and the Rhine united themselves in a strict confederacy against the princes, and especially the families of Wirtemburg and Bavaria. It is said that the emperor Wenceslaus secretly abetted their projects. The recent successes of the Swiss, who had now almost established their republic, inspired their neighbours in the empire with expectations which the event did not realize; for they were defeated in this war, and ultimately compelled to relinquish their league. Counter-associations were formed by the nobles, styled society of St. George, St. William, the Lion, or the Panther (3).

Provincial states of the empire.

The spirit of political liberty was not confined to the free immediate cities. In all the German principalities, a form of limited monarchy prevailed, reflecting, on a reduced scale, the general constitution of the empire. As the emperors shared their legislative sovereignty with the diet, so all the princes who belonged to that assembly had their own provincial states composed of their feudal vassals, and of their mediate towns within their territory. No tax could be imposed without consent of the states; and, in some countries, the prince was obliged to account for the proper disposition of the money granted. In all matters of importance affecting the principality, and especially in cases of partition, it was necessary to consult them; and they

(1) Schmidt, t. iv. p. 98.; t. vi. p. 76. Pfeffel, p. 402. Du Cange, Gloss. v. Pfahlburger. Faubourg is derived from this word.

(2) Struvius, p. 498. Schmidt, t. iv. p. 101. Pfeffel, p. 416.

(3) Struvius, p. 640. Pfeffel, p. 526. Schmidt, t. v. p. 10.; t. vi. p. 78. Putter, p. 198.

sometimes decided between competitors in a disputed succession, though this indeed more strictly belonged to the emperor. The provincial states concurred with the prince in making laws, except such as were enacted by the general diet. The city of Wurtzburgh, in the fourteenth century, tells its bishop, that if a lord would make any new ordinance, the custom is that he must consult the citizens, who have always opposed his innovating upon the ancient laws without their consent (1).

Alienation of the imperial domain.

The ancient imperial domain, or possessions which belonged to the chief of the empire as such, had originally been very extensive. Besides large estates in every province, the territory upon each bank of the Rhine, afterwards occupied by the counts palatine, and ecclesiastical electors, was, until the thirteenth century, an exclusive property of the emperor. This imperial domain was deemed so adequate to the support of his dignity, that it was usual, if not obligatory, for him to grant away his patrimonial domains upon his election. But the necessities of Frederic II., and the long confusion that ensued upon his death, caused the domain to be almost entirely dissipated. Rodolph made some efforts to retrieve it, but too late; and the poor remains of what had belonged to Charlemagne and Otho were alienated by Charles IV. (2). This produced a necessary change in that part of the constitution which deprived an emperor of hereditary possessions. It was however some time before it took place. Even Albert I. conferred the duchy of Austria upon his sons when he was chosen emperor (3). Louis of Bavaria was the first who retained his hereditary dominions, and made them his residence (4). Charles IV. and Wenceslaus lived almost wholly in Bohemia; Sigismund chiefly in Hungary; Frederic III. in Austria. This residence in their hereditary countries, while it seemed rather to lower the imperial dignity, and to lessen their connexion with the general confederacy, gave them intrinsic power and influence. If the emperors of the houses of Luxemburg and Austria were not like the Conrads and Frederics, they were at least very superior in importance to the Williams and Adolphuses of the thirteenth century.

Accession of Maximilian. Diet of Worms. 1495

The accession of Maximilian nearly coincides with the expedition of Charles VIII. against Naples; and I should here close the German history of the middle age, were it not for the great epoch which is made by the diet of Worms in 1495. This assembly is celebrated for the establishment of a perpetual public peace, and of a paramount court of justice, the Imperial Chamber.

Establishment of public peace.

The same causes which produced continual hostilities among the French nobility were not likely to operate

(1) Schmidt, t. vi. p. 8. Putter, p. 236.
(2) Pfeffel, p. 580.
(3) Id. p. 444. Struvius, p. 548.
(4) Struvius, p. 611. In the capitulation of Rebert, it was expressly provided, that he should retain any escheated fief for the domain, instead of granting it away; so completely was the public policy of the empire reversed. Schmidt, t. v. p. 44.

less powerfully on the Germans, equally warlike with their neighbours, and rather less civilized. But while the imperial government was still vigorous, they were kept under some restraint. We find Henry III., the most powerful of the Franconian emperors, forbidding all private defiances, and establishing solemnly a general peace (1). After his time, the natural tendency of manners overpowered all attempts to coerce it, and private war raged without limits in the empire. Frederic I. endeavoured to repress it by a regulation which admitted its legality. This was the law of defiance (jus diffidationis), which required a solemn declaration of war, and three days' notice, before the commencement of hostile measures. All persons contravening this provision were deemed robbers and not legitimate enemies (2). Frederic II. carried the restraint farther, and limited the right of self-redress to cases where justice could not be obtained. Unfortunately there was, in later times, no sufficient provision for rendering justice. The German empire indeed had now assumed so peculiar a character, and the mass of states who composed it were in so many respects sovereign within their own territories, that wars, unless in themselves unjust, could not be made a subject of reproach against them, nor considered, strictly speaking, as private. It was certainly most desirable to put an end to them by common agreement, and by the only means that could render war unnecessary, the establishment of a supreme jurisdiction. War indeed, legally undertaken, was not the only, nor the severest grievance. A very large proportion of the rural nobility lived by robbery (3). Their castles, as the ruins still bear witness, were erected upon inaccessible hills, and in defiles that command the public road. An archbishop of Cologne having built a fortress of this kind, the governor inquired how he was to maintain himself, no revenue having been assigned for that purpose. The prelate only desired him to remark, that the castle was situated near the junction of four roads (4). As commerce increased, and the example of French and Italian civilization rendered the Germans more sensible to their own rudeness, the preservation of public peace was loudly demanded. Every diet under Frederic III. professed to occupy itself with the two great objects of domestic reformation, peace and law. Temporary cessations, during which all private hostility was illegal, were sometimes enacted; and if observed, which may well be doubted, might contribute to accustom men to habits of greater tranquillity. The leagues of the cities were probably more efficacious checks upon the disturbers of order. In 1486, a ten years' peace was pro-

(1) Pfeffel, p. 212.

(2) Schmidt, t. iv. p. 108. et infra. Pfeffel, p. 340. Putter, p. 205.

(3) Germani atque Alemani, quibus census patrimonii ad victum suppetit, et hos qui procul urbibus, aut qui castellis et oppidulis dominantur, *quorum magna pars latrocinio deditur*, nobiles censent. Pet. de Andlo. apud Schmidt, t. v. p. 490.

(4) Quem cum officiatus suus interrogans, de quo castrum deberet retinere, cum annuis careret reditibus, dicitur respondisse: Quatuor viæ sunt trans castrum situatæ. Auctor apud Schmidt, p. 492.

claimed, and before the expiration of this period the perpetual abolition of the right of defiance was happily accomplished in the diet of Worms (1).

These wars, incessantly waged by the states of Germany, seldom ended in conquest. Very few princely houses of the middle ages were aggrandized by such means. That small and independent nobility, the counts and knights of the empire, whom the unprincipled rapacity of our own age has annihilated, stood through the storms of centuries with little diminution of their numbers. An incursion into the enemy's territory, a pitched battle, a siege, a treaty, are the general circumstances of the minor wars of the middle ages, as far as they appear in history. Before the invention of artillery, a strongly fortified castle, or walled city, was hardly reduced except by famine, which a besieging army, wasting improvidently its means of subsistence, was full as likely to feel. That invention altered the condition of society, and introduced an inequality of forces, that rendered war more inevitably ruinous to the inferior party. Its first and most beneficial effect was to bring the plundering class of the nobility into controul; their castles were more easily taken, and it became their interest to deserve the protection of law. A few of these continued to follow their old profession after the diet of Worms; but they were soon overpowered by the more efficient police established under Maximilian.

Imperial Chamber.

The next object of the diet was to provide an effectual remedy for private wrongs which might supersede all pretence for taking up arms. The administration of justice had always been a high prerogative as well as bounden duty of the emperors. It was exercised originally by themselves in person, or by the count palatine, the judge who always attended their court. In the provinces of Germany, the dukes were entrusted with this duty; but, in order to controul their influence, Otho the Great appointed provincial counts palatine, whose jurisdiction was in some respects exclusive of that still possessed by the dukes. As the latter became more independent of the empire, the provincial counts palatine lost the importance of their office, though their name may be traced to the twelfth and thirteenth centuries (2). The ordinary administration of justice by the emperors went into disuse; in cases where states of the empire were concerned, it appertained to the diet, or to a special court of princes. The first attempt to re-establish an imperial tribunal was made by Frederic II. in a diet held at Mentz in 1235. A judge of the court was appointed to sit daily, with certain assessors, half nobles, half lawyers, and with jurisdiction over all causes where princes of the empire were not concerned (3). Rodolph of Hapsburg endeavoured to give efficacy to this judicature; but after his reign, it underwent

(1) Schmidt, t. iv. p. 116.; t. v. p. 338. 371.; t. vi. p. 34. Putter, p. 292. 348.

(2) Pfeffel, p. 180.

(3) Idem. p. 386. Schmidt, t. iv, p. 56.

the fate of all those parts of the Germanic constitution which maintained the prerogatives of the emperors. Sigismund endeavoured to revive this tribunal; but as he did not render it permanent, nor fix the place of its sittings, it produced little other good than as it excited an earnest anxiety for a regular system. This system, delayed throughout the reign of Frederic III., was reserved for the first diet of his son (1).

The Imperial Chamber, such was the name of the new tribunal, consisted, at its original institution, of a chief judge, who was to be chosen among the princes or counts, and of sixteen assessors, partly of noble or equestrian rank, partly professors of law. They were named by the emperor with the approbation of the diet. The functions of the Imperial Chamber were chiefly the two following. They exercised an appellant jurisdiction over causes that had been decided by the tribunals established in states of the empire. But their jurisdiction in private causes was merely appellant. According to the original law of Germany, no man could be sued except in the nation or province to which he belonged. The early emperors travelled from one part of their dominions to another, in order to render justice consistently with this fundamental privilege. When the Luxemburg emperors fixed their residence in Bohemia, the jurisdiction of the imperial court in the first instance would have ceased of itself by the operation of this ancient rule. It was not, however, strictly complied with; and it is said that the emperors had a concurrent jurisdiction with the provincial tribunals even in private causes. They divested themselves, nevertheless, of this right by granting privileges *de non evocando*; so that no subject of a state which enjoyed such a privilege could be summoned into the imperial court. All the electors possessed this exemption by the terms of the Golden Bull; and it was specially granted to the burgraves of Nuremberg, and some other princes. This matter was finally settled at the diet of Worms; and the Imperial Chamber was positively restricted from taking cognizance of any causes in the first instance, even where a state of the empire was one of the parties. It was enacted, to obviate the denial of justice that appeared likely to result from the regulation in the latter case, that every elector and prince should establish a tribunal in his own dominions, where suits against himself might be entertained (2).

The second part of the chamber's jurisdiction related to disputes between two states of the empire. But these too could only come before it by way of appeal. During the period of anarchy which preceded the establishment of its jurisdiction, a custom was introduced, in order to prevent the constant recurrence of hostilities, of referring the quarrels of states to certain arbitrators, called Austregues, chosen among states of the same rank. This conven-

(1) Pfeffel, t. ii. p. 86.

(2) Schmidt, t. v. p. 373. Putter, p. 372.

tional reference became so popular that the princes would not consent to abandon it on the institution of the Imperial Chamber; but, on the contrary, it was changed into an invariable and universal law, that all disputes between different states must, in the first instance, be submitted to the arbitration of Austregues (1).

Establishment of circles.

The sentences of the chamber would have been very idly pronounced, if means had not been devised to carry them into execution. In earlier times the want of coercive process had been more felt than that of actual jurisdiction. For a few years after the establishment of the chamber, this deficiency was not supplied. But in 1501 an institution, originally planned under Wenceslaus, and attempted by Albert II., was carried into effect. The empire, with the exception of the electorates and the Austrian dominions, was divided into six circles; each of which had its council of states, its director whose province it was to convoke them, and its military force to compel obedience. In 1512 four more circles were added, comprehending those states which had been excluded in the first division. It was the business of the police of the circles to enforce the execution of sentences pronounced by the Imperial Chamber against refractory states of the empire (2).

Aulic Council.

As the judges of the Imperial Chamber were appointed with the consent of the diet, and held their sittings in a free imperial city, its establishment seemed rather to encroach on the ancient prerogatives of the emperors. Maximilian expressly reserved these in consenting to the new tribunal. And, in order to revive them, he soon afterwards instituted an Aulic Council at Vienna, composed of judges appointed by himself, and under the political controul of the Austrian government. Though some German patriots regarded this tribunal with jealousy, it continued until the dissolution of the empire. The Aulic Council had, in all cases, a concurrent jurisdiction with the Imperial Chamber; an exclusive one in feudal and some other causes. But it was equally confined to cases of appeal; and these, by multiplied privileges de non appellando, granted to the electoral and superior princely houses, were gradually reduced into moderate compass (3).

The Germanic constitution may be reckoned complete, as to all its essential characteristics, in the reign of Maximilian. In later times, and especially by the treaty of Westphalia, it underwent several modifications. Whatever might be its defects, and many of them seem to have been susceptible of reformation without destroying the system of government, it had one invaluable excellence: it protected the rights of the weaker against the stronger powers. The law of nations was first taught in Germany, and

(1) Putter, p. 361. Pfeffel, p. 452.
(2) Putter, p. 355. Pfeffel, t. ii. p. 100.
(3) Putter, p. 357. Pfeffel, p. 102.

grew out of the public law of the empire. To narrow, as far as possible, the rights of war and of conquest, was a natural principle of those who belonged to petty states, and had nothing to tempt them in ambition. No revolution of our own eventful age, except the fall of the ancient French system of government, has been so extensive, or so likely to produce important consequences, as the spontaneous dissolution of the German empire. Whether the new confederacy that has been substituted for that venerable constitution will be equally favourable to peace, justice, and liberty, is among the most interesting and difficult problems that can occupy a philosophical observer (1).

Limits of the empire.

At the accession of Conrad the First, Germany had by no means reached its present extent on the eastern frontier. Henry the Fowler and the Othos made great acquisitions upon that side. But tribes of Sclavonian origin, generally called Venedic, or, less properly, Vandal, occupied the northern coast from the Elbe to the Vistula. These were independent and formidable both to the kings of Denmark and princes of Germany, till, in the reign of Frederic Barbarossa, two of the latter, Henry the Lion, duke of Saxony, and Albert the Bear, margrave of Brandenburg, subdued Mecklenburg and Pomerania, which afterwards became duchies of the empire. Bohemia was undoubtedly subject, in a feudal sense, to Frederic I. and his successors; though its connexion with Germany was always slight. The emperors sometimes assumed a sovereignty over Denmark, Hungary, and Poland. But what they gained upon this quarter was compensated by the gradual separation of the Netherlands from their dominion, and by the still more complete loss of the kingdom of Arles. The house of Burgundy possessed most part of the former, and paid as little regard as possible to the imperial supremacy; though the German diets in the reign of Maximilian still continued to treat the Netherlands as equally subject to their lawful controul with the states on the right bank of the Rhine. But the provinces between the Rhone and the Alps were absolutely separated; Switzerland had completely succeeded in establishing her own independence; and the kings of France no longer sought even the ceremony of an imperial investiture for Dauphiné and Provence.

Bohemia.—Its constitution.

Bohemia, which received the Christian faith in the tenth century, was elevated to the rank of a kingdom near the end of the twelfth. The dukes and kings of Bohemia were feudally dependent upon the emperors, from whom they received investiture. They possessed, in return, a suffrage among the seven electors, and held one of the great offices in the imperial court. But separated by a rampart of mountains, by a difference of origin and language, and perhaps by national prejudices, from Germany, the Bohemians withdrew as far as possible from the general politics

(1) The first edition of this work was published early in 1818.

of the confederacy. The kings obtained dispensations from attending the diets of the empire, nor were they able to reinstate themselves in the privilege thus abandoned till the beginning of the last century (1). The government of this kingdom, in a very slight degree partaking of the feudal character (2), bore rather a resemblance to that of Poland; but the nobility were divided into two classes, the baronial and the equestrian, and the burghers formed a third state in the national diet. For the peasantry, they were in a condition of servitude, or predial villenage. The royal authority was restrained by a coronation oath, by a permanent senate, and by frequent assemblies of the diet, where a numerous and armed nobility appeared to secure their liberties by law or force (3). The sceptre passed, in ordinary times, to the nearest heir of the royal blood; but the right of election was only suspended, and no king of Bohemia ventured to boast of it as his inheritance (4). This mixture of elective and hereditary monarchy was common, as we have seen, to most European kingdoms in their original constitution, though few continued so long to admit the participation of popular suffrages.

House of Luxemburg.

The reigning dynasty having become extinct, in 1306, by the death of Wenceslaus, son of that Ottocar, who, after extending his conquests to the Baltic sea, and almost to the Adriatic, had lost his life in an unsuccessful contention with the emperor Rodolph, the Bohemians chose John of Luxemburg, son of Henry VII. Under the kings of this family in the fourteenth century, and especially Charles IV., whose character appeared in a far more advantageous light in his native domains than in the empire, Bohemia imbibed some portion of refinement and science (5). An university erected by Charles at Prague became one of the most celebrated in Europe. John Huss, rector of the university, who had distinguished himself by opposition to many abuses then prevailing in the church, repaired to the council of Constance, under a safe conduct from the emperor Sigismund. In violation of this pledge, to the indelible infamy of that prince and of the council, he was condemned to be burned; and his disciple, Jerome of Prague, underwent afterwards the same fate. His countrymen, aroused by this atrocity, flew to arms. They found at their head one of those extraordinary men, whose genius, created by nature and called into action by fortuitous events, appears to borrow no

John Huss. 1416

Hussite war.

(1) Pfeffel, t. ii. p. 497.

(2) Bona ipsorum totâ Bohemiâ pleraque omnia hæreditaria sunt seu alodialia, perpauca feudalia. Stransky, Resp. Bohemica, p. 392. Stransky was a Bohemian protestant, who fled to Holland after the subversion of the civil and religious liberties of his country by the fatal battle of Prague in 1621.

(3) Dubravius, the Bohemian historian, relates (lib. xviii.) that the kingdom having no written laws, Wenceslaus, one of the kings, about the year 1300, sent for an Italian lawyer to compile a code. But the nobility refused to consent to this: aware, probably, of the consequences of letting in the prerogative doctrines of the civilians. They opposed, at the same time, the institution of an university at Prague, which however took place afterwards under Charles IV.

(4) Stransky, Resp. Bohem. Coxe's House of Austria, p. 487.

(5) Schmidt. Coxe.

John Ziska. reflected light from that of others. John Zisca had not been trained in any school which could have initiated him in the science of war; that indeed, except in Italy, was still rude, and no where more so than in Bohemia. But, self-taught, he became one of the greatest captains who had appeared hitherto in Europe. It renders his exploits more marvellous, that he was totally deprived of sight. Zisca has been called the inventor of the modern art of fortification; the famous mountain near Prague, fanatically called Tabor, became, by his skill, an impregnable entrenchment. For his stratagems, he has been compared to Hannibal. In battle, being destitute of cavalry, he disposed at intervals ramparts of carriages filled with soldiers, to defend his troops from the enemy's horse. His own station was by the chief standard; where, after hearing the circumstances of the situation explained, he gave his orders for the disposition of the army. Zisca was never defeated; and his genius inspired the Hussites with such enthusiastic affection, that some of those who had served under him, refused to obey any other general, and denominated themselves Orphans, in commemoration of his loss. He was indeed a ferocious enemy, though some of his cruelties might, perhaps, be extenuated by the law of retaliation; but to his soldiers affable and generous, dividing among them all the spoil (1).

Calixtins. 1424 Even during the lifetime of Zisca, the Hussite sect was disunited; the citizens of Prague and many of the nobility contenting themselves with moderate demands, while the Taborites, his peculiar followers, were actuated by a most fanatical frenzy. The former took the name of Calixtins, from their retention of the sacramental cup, of which the priests had latterly thought fit to debar laymen; an abuse indeed not sufficient to justify a civil war, but so totally without pretence or apology, that nothing less than the determined obstinacy of the Romish church could have maintained it to this time. The Taborites, though no longer led by Zisca, gained some remarkable victories, but were at last wholly defeated; while the Catholic and Calixtin parties came to an accommodation, by which Sigismund was acknowledged as king of Bohemia, which he had claimed by the title of heir to his brother Wenceslaus, and a few indulgences, especially the use 1433 of the sacramental cup, conceded to the moderate Hussites. But this compact, though concluded by the council of Basle, being ill observed, through the perfidious bigotry of the see of Rome, the reformers armed again to defend their religious liberties, and ultimately elected a nobleman of their own party, by name George Podiebrad, to the throne of Bohemia, which he main- 1458 tained during his life with great vigour and prudence (2). Upon his death, they chose Uladislaus, son of Casimir 1471 king of Poland, who afterwards obtained also the king-

(1) Lenfant, Histoire de la guerre des Hussites. Schmidt. Coxe. (2) Lenfant. Schmidt. Coxe.

dom of Hungary. Both these crowns were conferred on his son Louis, after whose death, in the unfortunate battle of Mohacz, Ferdinand of Austria became sovereign of the two kingdoms. 1527

Hungary.

The Hungarians, that terrible people who laid waste the Italian and German provinces of the empire in the tenth century, became proselytes soon afterwards to the religion of Europe, and their sovereign, St. Stephen, was admitted by the pope into the list of Christian kings. Though the Hungarians were of a race perfectly distinct from either the Gothic or the Sclavonian tribes, their system of government was in a great measure analogous. None indeed could be more natural to rude nations who had but recently accustomed themselves to settled possessions, than a territorial aristocracy, jealous of unlimited or even hereditary power in their chieftain, and subjugating the inferior people to that servitude, which, in such a state of society, is the unavoidable consequence of poverty.

Sigismund. 1392.

The marriage of an Hungarian princess with Charles II., king of Naples, eventually connected her country far more than it had been with the affairs of Italy. I have mentioned in a different place the circumstances which led to the invasion of Naples by Louis king of Hungary, and the wars of that powerful monarch with Venice. By marrying the eldest daughter of Louis, Sigismund, afterwards emperor, acquired the crown of Hungary, which upon her death without issue he retained in his own right, and was even able to transmit to the child of a second marriage, and to her husband Albert duke of Austria. From this commencement is deduced the connexion between Hungary and Austria. In two years, however, Albert dying left his widow pregnant; but the states of Hungary, jealous of Austrian influence, and of the intrigues of a minority, without waiting for her delivery, bestowed the crown upon Uladislaus, king of Poland. The birth of Albert's posthumous son Ladislaus produced an opposition in behalf of the infant's right; but the Austrian party turned out the weaker, and Uladislaus, after a civil war of some duration, became undisputed king. Meanwhile a more formidable enemy drew near. The Turkish arms had subdued all Servia, and excited a just alarm throughout Christendom. Uladislaus led a considerable force, to which the presence of the cardinal Julian gave the appearance of a crusade, into Bulgaria, and after several successes, concluded an honourable treaty with Amurath II. But this he was unhappily persuaded to violate, at the instigation of the cardinal, who abhorred the impiety of keeping faith with infidels (1). Heaven judged of this otherwise, if

1437

Uladislaus. 1440

Battle of Warna. 1444

(1) Æneas Sylvius lays this perfidy on Pope Eugenius IV. Scripsit cardinali, nullum valere fœdus, quòd *se inconsulto* cum hostibus religionis percussum esset. p. 397. The words in italics are slipped in, to give a slight pretext for breaking the treaty.

the judgment of heaven was pronounced upon the field of Warna. In that fatal battle, Uladislaus was killed, and the Hungarians utterly routed. The crown was now permitted to rest on the head of young Ladislaus; but the regency was allotted by the states of Hungary to a native warrior, John Hunniades (1). This hero stood in the breach for twelve years against the Turkish power, frequently defeated, but unconquered in defeat. If the renown of Hunniades may seem exaggerated by the partiality of writers who lived under the reign of his son, it is confirmed by more unequivocal evidence, by the dread and hatred of the Turks, whose children were taught obedience by threatening them with his name, and by the deference of a jealous aristocracy to a man of no distinguished birth. He surrendered to young Ladislaus a trust that he had exercised with perfect fidelity; but his merit was too great to be forgiven, and the court never treated him with cordiality. The last, and the most splendid service of Hunniades was the relief of Belgrade. That strong city was besieged by Mahomet II., three years after the fall of Constantinople; its capture would have laid open all Hungary. A tumultuary army, chiefly collected by the preaching of a friar, was entrusted to Hunniades; he penetrated into the city, and having repulsed the Turks in a fortunate sally, wherein Mahomet was wounded, had the honour of compelling him to raise the siege in confusion. The relief of Belgrade was more important in its effect than in its immediate circumstances. It revived the spirits of Europe, which had been appalled by the unceasing victories of the infidels. Mahomet himself seemed to acknowledge the importance of the blow, and seldom afterwards attacked the Hungarians. Hunniades died soon after this achievement, and was followed by the king Ladislaus (2). The states of Hungary, although the emperor Frederic III. had secured to himself, as he thought, the reversion, were justly averse to his character, and to Austrian connexions. They conferred their crown on Matthias Corvinus, son of their great Hunniades. This prince reigned above thirty years with considerable reputation, to which his patronage of learned men, who repaid his munificence with very profuse eulogies, did not a little contribute (3). Hungary,

Hunniades.

Relief of Belgrade. 1456

Matthias Corvinus. 1458

(1) Hunniades was a Wallachian, of a small family. The Poles charged him with cowardice at Warna. (Æneas Sylvius, p. 398.) And the Greeks impute the same to him, or at least desertion of his troops, at Cossova, where he was defeated in 1448. (Spondanus, ad ann. 1448.) Probably he was one of those prudently brave men, who, when victory is out of their power, reserve themselves to fight another day; which is the character of all partizans accustomed to desultory warfare. This is the apology made for him by Æneas Sylvius: fortassè rei militaris perito nulla in pugnâ salus visa, et salvare aliquos quàm omnes perire maluit. Poloni acceptam eo prælio cladem Huniadis vecordiæ atque ignaviæ tradiderunt; ipse sua consilia spreta conquestus est. I observe that all the writers upon Hungarian affairs have a party bias one way or other. The best and most authentic account of Hunniades seems to be, still allowing for this partiality, in the chronicle of John Thwrocz, who lived under Matthias. Bonfinius, an Italian compiler of the same age, has amplified this original authority in his three decades of Hungarian history.

(2) Ladislaus died at Prague, at the age of twenty-two, with great suspicion of poison, which fell chiefly on George Podiebrad and the Bohemians. Æneas Sylvius was with him at the time, and in a letter written immediately after, plainly hints this; and his manner carries with it more persuasion than if he had spoken out. Epist. 324. Mr. Coxe, however, informs us that the Bohemian historians have fully disproved the charge.

(3) Spondanus frequently blames the Italians, who received pensions from Matthias, or wrote at

at least in his time, was undoubtedly formidable to her neighbours, and held a respectable rank as an independent power in the republic of Europe.

Switzerland.—Its early history. 1032

The kingdom of Burgundy or Arles comprehended the whole mountainous region which we now call Switzerland. It was accordingly reunited to the Germanic empire by the bequest of Rodolph along with the rest of his dominions. A numerous and ancient nobility, vassals one to another, or to the empire, divided the possession with ecclesiastical lords, hardly less powerful than themselves. Of the former we find the counts of Zahringen, Kyburg, Hapsburg, and Tokenburg most conspicuous; of the latter, the bishop of Coire, the abbot of St. Gall, and abbess of Seckingen. Every variety of feudal rights was early found and long preserved in Helvetia; nor is there any country whose history better illustrates that ambiguous relation, half property and half dominion, in which the territorial aristocracy, under the feudal system, stood with respect to their dependents. In the twelfth century, the Swiss towns rise into some degree of importance. Zuric was eminent for commercial activity, and seems to have had no lord but the emperor. Basle, though subject to its bishop, possessed the usual privileges of municipal government. Berne and Friburg, founded only in that century, made a rapid progress, and the latter was raised, along with Zuric, by Frederic II., in 1218, to the rank of a free imperial city. Several changes in the principal Helvetian families took place in the thirteenth century, before the end of which the house of Hapsburg, under the politic and enterprising Rodolph, and his son Albert, became possessed, through various titles, of a great ascendency in Switzerland (1).

Albert of Austria.

Of these titles none was more tempting to an ambitious chief, than that of advocate to a convent. That specious name conveyed with it a kind of indefinite guardianship, and right of interference, which frequently ended in reversing the conditions of the ecclesiastical sovereign and its vassal. But during times of feudal anarchy, there was perhaps no other means to secure the rich abbies from absolute spoliation; and the free cities in their early stage sometimes adopted the same policy. Among other advocacies, Albert obtained that of some convents which had estates in the vallies of Schwitz and Underwald. The sequestered regions in the heart of the Alps had been for ages the habitation of a pastoral race, so happily forgotten, or so inaccessible in their fastnesses, as to have acquired a virtual independence, regulating their own affairs in their general assembly

The Swiss.

his court, for exaggerating his virtues, or dissembling his misfortunes. And this was probably the case. However, Spondanus has rather contracted a prejudice against the Corvini. A treatise of Galeotus Martius, an Italian *littérateur*, De dictis et factis Mathiæ, though it often notices an ordinary saying as jocosè or facetè dictum, gives a favourable impression of Matthias's ability, and also of his integrity.

(1) Planta's History of the Helvetic Confederacy, vol. i. chaps. 2—5.

with a perfect equality, though they acknowledged the sovereignty of the empire (1). The people of Schwitz had made Rodolph their advocate. They distrusted Albert, whose succession to his father's inheritance spread alarm through Helvetia. It soon appeared that their suspicions were well founded. Besides the local rights which his ecclesiastical advocacies gave him over part of the forest cantons, he pretended, after his election to the empire, to send imperial bailiffs into their vallies, as administrators of criminal justice. Their oppression of a people unused to controul, whom it was plainly the design of Albert to reduce into servitude, excited those generous emotions of resentment, which a brave and simple race have seldom the discretion to repress. Three men, Stauffacher of Schwitz, Furst of Uri, Melchthal of Underwald, each with ten chosen associates, met by night in a sequestered field, and swore to assert the common cause of their liberties, without bloodshed or injury to the rights of others. Their success was answerable to the justice of their undertaking; the three cantons unanimously took up arms, and expelled their oppressors without a contest. Albert's assassination by his nephew, which followed soon afterwards, fortunately gave them leisure to consolidate their union (2). He was succeeded in the empire by Henry VII., jealous of the Austrian family, and not at all displeased at proceedings which had been accompanied with so little violence or disrespect for the empire. But Leopold, duke of Austria, resolved to humble the peasants who had rebelled against his father, led a considerable force into their country. The Swiss, commending themselves to heaven, and determined rather to perish than undergo that yoke a second time, though ignorant of regular discipline, and unprovided with defensive armour, utterly discomfited the assailants at Morgarten (3).

Their insurrection.

1308

Battle of Morgarten. 1315

This great victory, the Marathon of Switzerland, confirmed the independence of the three original cantons. After some years, Lucerne, contiguous in situation and alike in interests, was incorporated into their confederacy. It was far more materially enlarged about the middle of the fourteenth century by the accession of Zuric, Glaris, Zug, and Berne, all which took place within two years. The first and last of these cities had already been engaged in frequent wars with the Helvetian nobility, and their internal policy was altogether republican (4). They acquired, not independence, which they already enjoyed, but additional security by this union with the Swiss, properly so called, who in deference to their power and reputation ceded to them the first rank in the league. The eight already enumerated are called the ancient cantons, and continued till the late reformation of the

Formation of Swiss Confederacy.

(1) Planta, c. 4.
(2) Id. c. 6.
(3) Planta, c. 7.
(4) Id. c. 8, 9.

Helvetic system to possess several distinctive privileges, and even rights of sovereignty over subject territories, in which the five cantons of Friburg, Soleure, Basle, Schaffausen, and Appenzel did not participate. From this time the united cantons, but especially those of Berne and Zuric, began to extend their territories at the expense of the rural nobility. The same contest between these parties, with the same termination, which we know generally to have taken place in Lombardy during the eleventh and twelfth centuries, may be traced with more minuteness in the annals of Switzerland (1). Like the Lombards too, the Helvetic cities acted with policy and moderation towards the nobles whom they overcame, admitting them to the franchises of their community, as coburghers, (a privilege which virtually implied a defensive alliance against any assailant,) and uniformly respecting the legal rights of property. Many feudal superiorities they obtained from the owners in a more peaceable manner, through purchase or mortgage. Thus the house of Austria, to which the extensive domains of the counts of Kyburg had devolved, abandoning, after repeated defeats, its hopes of subduing the forest cantons, alienated a great part of its possessions to Zuric and Berne (2). And the last remnant of their ancient Helvetic territories in Argovia was wrested in 1417 from Frederic count of Tyrol, who imprudently supporting Pope John XXIII. against the council of Constance, had been put to the ban of the empire. These conquests Berne could not be induced to restore, and thus completed the independence of the confederate republics (3). The other free cities, though not yet incorporated, and the few remaining nobles, whether lay or spiritual, of whom the abbot of St. Gall was the principal, entered into separate leagues with different cantons. Switzerland became therefore, in the first part of the fifteenth century, a free country, acknowledged as such by neighbouring states, and subject to no external controul, though still comprehended within the nominal sovereignty of the empire.

The affairs of Switzerland occupy a very small space in the great chart of European history. But in some respects they are more interesting than the revolutions of mighty kingdoms. Nowhere besides do we find so many titles to our sympathy, or the union of so much virtue with so complete success. In the Italian republics, a more splendid temple may seem to have been erected to liberty; but, as we approach, the serpents of faction hiss around her altar, and the form of tyranny flits among the distant shadows behind the shrine. Switzerland, not absolutely blameless, (for what republic has been so?) but comparatively exempt from turbulence, usurpation, and injustice, has well deserved to employ the native pen of an historian, accounted the most eloquent of the last age (4). Other

(1) Planta, c. 10.
(2) Id. c. 11.
(3) Id. vol. ii. c. 1.
(4) I am unacquainted with Muller's history in

nations displayed an insuperable resolution in the defence of walled towns; but the steadiness of the Swiss in the field of battle was without a parallel, unless we recall the memory of Lacedæmon. It was even established as a law, that whoever returned from battle after a defeat should forfeit his life by the hands of the executioner. Sixteen hundred men, who had been sent to oppose a predatory invasion of the French in 1444, though they might have retreated without loss, determined rather to perish on the spot, and fell amidst a far greater heap of the hostile slain (1). At the famous battle of Sempach in 1385, the last which Austria presumed to try against the forest cantons, the enemy's knights, dismounted from their horses, presented an impregnable barrier of lances, which disconcerted the Swiss; till Winkelried, a gentleman of Underwald, commending his wife and children to his countrymen, threw himself upon the opposite ranks, and collecting as many lances as he could grasp, forced a passage for his followers by burying them in his bosom (2).

Excellence of the Swiss troops.

The burghers and peasants of Switzerland, ill provided with cavalry, and better able to dispense with it than the natives of champaign countries, may be deemed the principal restorers of the Greek and Roman tactics, which place the strength of armies in a steady mass of infantry. Besides their splendid victories over the dukes of Austria, and their own neighbouring nobility, they had repulsed, in the year 1375, one of those predatory bodies of troops, the scourge of Europe in that age, and to whose licentiousness kingdoms and free states yielded alike a passive submission. They gave the Dauphin, afterwards Louis XI., who entered their country in 1444 with a similar body of ruffians, called Armagnacs, the disbanded mercenaries of the English war, sufficient reason to desist from his invasion and to respect their valour. That able prince formed indeed so high a notion of the Swiss, that he sedulously cultivated their alliance during the rest of his life. He was made abundantly sensible of the wisdom of this policy, when he saw his greatest enemy, the duke of Burgundy, routed at Granson and Morat, and his affairs irrecoverably ruined by these hardy republicans. The ensuing age is the most conspicuous, though not the most essentially glorious, in the history of Switzerland. Courted for the excellence of their troops by the rival sovereigns of Europe, and themselves too sensible

the original language; but, presuming the first volume of Mr. Planta's History of the Helvetic Confederacy to be a free translation or abridgment of it, I can well conceive that it deserves the encomiums of Madame de Stael, and other foreign critics. It is very rare to meet with such picturesque and lively delineation in a modern historian of distant times. But I must observe, that if the authentic chronicles of Switzerland have enabled Muller to embellish his narration with so much circumstantial detail, he has been remarkably fortunate in his authorities. No man could write the annals of England or France in the fourteenth century with such particularity, if he was scrupulous not to fill up the meagre sketch of chronicles from the stories of his invention. The striking scenery of Switzerland, and Muller's exact acquaintance with it, have given him another advantage as a *painter* of history.

(1) Planta, vol. ii. c. 2.

(2) Id., vol. i. c. 10.

both to ambitious schemes of dominion and to the thirst of money, the united cantons came to play a very prominent part in the wars of Lombardy, with great military renown, but not without some impeachment of that sterling probity which had distinguished their earlier efforts for independence. These events however do not fall within my limits; but the last year of the fifteenth century is a leading epoch with which I shall close this sketch. Though the house of Austria had ceased to menace the liberties of Helvetia, and had even been for many years its ally, the emperor Maximilian, aware of the important service he might derive from the cantons in his projects upon Italy, as well as of the disadvantage he sustained by their partiality to French interest, endeavoured to revive the unextinguished supremacy of the empire. That supremacy had just been restored in Germany by the establishment of the Imperial Chamber, and of a regular pecuniary contribution for its support, as well as for other purposes, in the diet of Worms. The Helvetic cantons were summoned to yield obedience to these imperial laws; an innovation, for such the revival of obsolete prerogatives must be considered, exceedingly hostile to their republican independence, and involving consequences not less material in their eyes, the abandonment of a line of policy which tended to enrich, if not to aggrandize them. Their refusal to comply brought on a war, wherein the Tyrolese subjects of Maximilian, and the Swabian league, a confederacy of cities in that province lately formed under the emperor's auspices, were principally engaged against the Swiss. But the success of the latter was decisive, and after a terrible devastation of the frontiers of Germany, peace was concluded upon terms very honourable for Switzerland. The cantons were declared free from the jurisdiction of the Imperial Chamber, and from all contributions imposed by the diet. Their right to enter into foreign alliance, even hostile to the empire, if it was not expressly recognized, continued unimpaired in practice; nor am I aware that they were at any time afterwards supposed to incur the crime of rebellion by such proceedings. Though, perhaps, in the strictest letter of public law, the Swiss cantons were not absolutely released from their subjection to the empire until the treaty of Westphalia, their real sovereignty must be dated by an historian from the year when every prerogative which a government can exercise was finally abandoned (1).

Ratification of their independence in 1500.

(1) Planta, vol. ii. c. 4.

CHAPTER VI.

HISTORY OF THE GREEKS AND SARACENS.

Rise of Mohammedism—Causes of its Success—Progress of Saracen Arms—Greek Empire—Decline of the Khalifs—the Greeks recover Part of their Losses—the Turks—the Crusades—Capture of Constantinople by the Latins—its Recovery by the Greeks—the Moguls—the Ottomans—Danger at Constantinople—Timur—Capture of Constantinople by Mahomet II.—Alarm of Europe.

The difficulty which occurs to us in endeavouring to fix a natural commencement of modern history even in the Western countries of Europe is much enhanced when we direct our attention to the Eastern Empire. In tracing the long series of the Byzantine annals, we never lose sight of antiquity; the Greek language, the Roman name, the titles, the laws, all the shadowy circumstance of ancient greatness, attend us throughout the progress from the first to the last of the Constantines; and it is only when we observe the external condition and relations of their empire, that we perceive ourselves to be embarked in a new sea, and are compelled to deduce, from points of bearing to the history of other nations, a line of separation, which the domestic revolutions of Constantinople would not satisfactorily afford. The appearance of Mohammed, and the conquests of his disciples, present an epoch in the history of Asia, still more important and more definite than the subversion of the Roman empire in Europe; and hence the boundary line between the ancient and modern divisions of Byzantine history will intersect the reign of Heraclius. That prince may be said to have stood on the verge of both hemispheres of time, whose youth was crowned with the last victories over the successors of Artaxerxes, and whose age was clouded by the first calamities of Mohammedan invasion.

Appearance of Mohammed.

Of all the revolutions which have had a permanent influence upon the civil history of mankind, none could so little be anticipated by human prudence as that effected by the religion of Arabia. As the seeds of invisible disease grow up sometimes in silence to maturity, till they manifest themselves hopeless and irresistible, the gradual propagation of a new faith in a barbarous country beyond the limits of the empire was hardly known perhaps, and certainly disregarded, in the court of Constantinople. Arabia, in the age of Mohammed, was divided into many small states, most of which, however, seem to have looked up to Mecca as the capital of their nation and the chief seat of their religious worship. The capture of that city accordingly, and subjugation of its powerful and numerous aristocracy, readily drew after it the submission of the minor tribes, who transferred to the

conqueror the reverence they were used to shew to those he had subdued. If we consider Mohammed only as a military usurper, there is nothing more explicable, or more analogous, especially, to the course of Oriental history, than his success. But as the author of a religious imposture, upon which, though avowedly unattested by miraculous powers, and though originally discountenanced by the civil magistrates, he had the boldness to found a scheme of universal dominion, which his followers were half enabled to realize, it is a curious speculation, by what means he could inspire so sincere, so ardent, so energetic, and so permanent a belief.

Causes of his success.

A full explanation of the causes which contributed to the progress of Mohammedism is not perhaps at present attainable by those most conversant with this department of literature (1). But we may point out several of leading importance; in the first place, those just and elevated notions of the divine nature, and of moral duties, the gold ore that pervades the dross of the Koran, which were calculated to strike a serious and reflecting people, already perhaps disinclined, by intermixture with their Jewish and Christian fellow-citizens, to the superstitions of their ancient idolatry (2); next, the artful incorporation of tenets, usages, and traditions from the various religions that existed in Arabia (3); and thirdly, the extensive application of the precepts in the Koran, a book confessedly written with more elegance and purity, to all legal transactions, and all the business of life. It may be expected that I should add to these, what is commonly considered as a distinguishing mark of Mohammedism, its indulgence to voluptuousness. But this appears to be greatly exaggerated. Although the character of its founder may have been tainted

(1) We are very destitute of satisfactory materials for the history of Mohammed himself. Abulfeda, the most judicious of his biographers, lived in the fourteenth century, when it must have been morally impossible to discriminate the truth amidst the torrent of fabulous tradition. Al Jannabi, whom Gagnier translated, is a mere legend writer; it would be as rational to quote the Acta Sanctorum as his romance. It is therefore difficult to ascertain the real character of the prophet, except as it is deducible from the Koran; and some sceptical Orientalists, if I am not mistaken, have called in question the absolute genuineness even of that. Gibbon has hardly apprized the reader sufficiently of the crumbling foundation upon which his narrative of Mohammed's life and actions depends.

(2) The very curious romance of Antar, written, perhaps, before the appearance of Mohammed, seems to render it probable that however idolatry, as we are told by Sale, might prevail in some parts of Arabia, yet the genuine religion of the descendants of Ishmael was a belief in the unity of God as strict as is laid down in the Koran itself, and accompanied by the same antipathy, partly religious, partly national, towards the Fire-worshippers, which Mohammed inculcated. This corroborates what I had said in the text before the publication of that work.

(3) I am very much disposed to believe, notwithstanding what seems to be the general opinion, that Mohammed had never read any part of the New Testament. His knowledge of Christianity appears to be wholly derived from the apocryphal gospels, and similar works. He admitted the miraculous conception and prophetic character of Jesus, but not his divinity or pre-existence. Hence it is rather surprising to read, in a popular book of sermons by a living prelate, that all the heresies of the Christian church (I quote the substance from memory) are to be found in the Koran, but especially that of Arianism. No one who knows what Arianism is, and what Mohammedism is, could possibly fall into so strange an error. The misfortune has been, that the learned writer, while accumulating a mass of reading upon this part of his subject, neglected what should have been the *nucleus* of the whole, a perusal of the single book which contains the doctrine of the Arabian impostor. In this strange chimera about the Arianism of Mohammed, he has been led away by a misplaced trust in Whitaker; a writer almost invariably in the wrong, and whose bad reasoning upon all the points of historical criticism, which he attempted to discuss, is quite notorious.

by sensuality as well as ferociousness, I do not think that he relied upon inducements of the former kind for the diffusion of his system. We are not to judge of this by rules of Christian purity, or of European practice. If polygamy was a prevailing usage in Arabia, as is not questioned, its permission gave no additional license to the proselytes of Mohammed, who will be found rather to have narrowed the unbounded liberty of Oriental manners in this respect; while his decided condemnation of adultery, and of incestuous connexions, so frequent among barbarous nations, does not argue a very lax and accommodating morality. A devout Mussulman exhibits much more of the Stoical than the Epicurean character. Nor can any one read the Koran without being sensible that it breathes an austere and scrupulous spirit. And in fact the founder of a new religion or sect is little likely to obtain permanent success by indulging the vices and luxuries of mankind. I should rather be disposed to reckon the severity of Mohammed's discipline among the causes of its influence. Precepts of ritual observance, being always definite and unequivocal, are less likely to be neglected, after their obligation has been acknowledged, than those of moral virtue. Thus the long fasting, the pilgrimages, the regular prayers and ablutions, the constant almsgiving, the abstinence from stimulating liquors, enjoined by the Koran, created a visible standard of practice among its followers, and preserved a continual recollection of their law.

But the prevalence of Islâm in the lifetime of its prophet, and during the first ages of its existence, was chiefly owing to the spirit of martial energy that he infused into it. The religion of Mohammed is as essentially a military system as the institution of chivalry in the west of Europe. The people of Arabia, a race of strong passions and sanguinary temper, inured to habits of pillage and murder, found in the law of their native prophet, not a license, but a command to desolate the world, and the promise of all that their glowing imaginations could anticipate of Paradise annexed to all in which they most delighted upon earth. It is difficult for us, in the calmness of our closets, to conceive that feverish intensity of excitement to which man may be wrought, when the animal and intellectual energies of his nature converge to a point, and the buoyancy of strength and courage reciprocates the influence of moral sentiment or religious hope. The effect of this union I have formerly remarked in the Crusades; a phenomenon perfectly analogous to the early history of the Saracens. In each, one hardly knows whether most to admire the prodigious exertions of heroism, or to revolt from the ferocious bigotry that attended them. But the Crusades were a temporary effort, not thoroughly congenial to the spirit of Christendom, which, even in the darkest and most superstitious ages, was not susceptible of the solitary and overruling fanaticism of the Moslems. They needed no excitement

from pontiffs and preachers to achieve the work to which they were called; the precept was in their law, the principle was in their hearts, the assurance of success was in their swords. "O prophet," exclaimed Ali, when Mohammed, in the first years of his mission, sought among the scanty and hesitating assembly of his friends a vizir and lieutenant in command, "I am the man: whoever rises against thee, I will dash out his teeth, tear out his eyes, break his legs, rip up his belly. O prophet, I will be thy vizir over them (1)." These words of Mohammed's early and illustrious disciple are, as it were, a text upon which the commentary expands into the whole Saracenic history. They contain the vital essence of his religion, implicit faith and ferocious energy. Death, slavery, tribute to unbelievers, were the glad tidings of the Arabian prophet. To the idolaters indeed, or those who acknowledged no special revelation, one alternative only was proposed, conversion or the sword. The People of the Book, as they are termed in the Koran, or four sects of Christians, Jews, Magians, and Sabians, were permitted to redeem their adherence to their ancient law, by the payment of tribute, and other marks of humiliation and servitude. But the limits which Mohammedan intolerance had prescribed to itself were seldom transgressed, the word pledged to unbelievers was seldom forfeited; and with all their insolence and oppression, the Moslem conquerors were mild and liberal in comparison with those who obeyed the pontiffs of Rome or Constantinople.

First conquests of the Saracens.

At the death of Mohammed in 632, his temporal and religious sovereignty embraced, and was limited by, the Arabian peninsula. The Roman and Persian empires, engaged in tedious and indecisive hostility upon the rivers of Mesopotamia, and the Armenian mountains, were viewed by the ambitious fanatics of his creed as their quarry. In the very first year of Mohammed's immediate successor, Abubeker, each of these mighty empires was invaded. The latter opposed but a short resistance. The crumbling fabric of eastern despotism is never secure against rapid and total subversion; a few victories, a few sieges, carried the Arabian arms from the Tigris to the Oxus, and overthrew, with the Sassanian dynasty, the ancient and famous religion they had professed. Seven years of active and unceasing warfare sufficed to subjugate the rich province of Syria, though defended by numerous armies and fortified cities; and the khalif Omar had scarcely returned thanks for the accomplishment of this conquest, when Amrou his lieutenant announced to him the entire reduction of Egypt. After some interval the Saracens won their way along the coast of Africa as far as the pillars of Hercules, and a third province was irretrievably torn from the Greek empire. These western conquests introduced

632—639

647—698

(1) Gibbon, vol. ix. p. 284.

them to fresh enemies, and ushered in more splendid successes; encouraged by the disunion of the Visigoths, and invited by treachery, Musa, the general of a master who sat beyond the opposite extremity of the Mediterranean Sea, passed over into Spain, and within about two years the name of Mohammed was invoked under the Pyrenees (1).

710

State of the Greek empire.

These conquests, which astonish the careless and superficial, are less perplexing to a calm inquirer than their cessation; the loss of half the Roman empire, than the preservation of the rest. A glance from Medina to Constantinople in the middle of the seventh century would probably have induced an indifferent spectator, if such a being may be imagined, to anticipate by eight hundred years the establishment of a Mohammedan dominion upon the shores of the Hellespont. The fame of Heraclius had withered in the Syrian war; and his successors appeared as incapable to resist, as they were unworthy to govern. Their despotism, unchecked by law, was often punished by successful rebellion; but not a whisper of civil liberty was ever heard, and the vicissitudes of servitude and anarchy consummated the moral degeneracy of the nation. Less ignorant than the western barbarians, the Greeks abused their ingenuity in theological controversies, those especially which related to the nature and incarnation of our Saviour, wherein the disputants, as is usual, became more positive and rancorous, as their creed receded from the possibility of human apprehension. Nor were these confined to the clergy, who had not, in the East, obtained the prerogative of guiding the national faith; the sovereigns sided alternately with opposing factions; Heraclius was not too brave, nor Theodora too infamous, for discussions of theology; and the dissenters from an imperial decision were involved in the double proscription of treason and heresy. But the persecutors of their opponents at home pretended to cowardly scrupulousness in the field; nor was the Greek church ashamed to require the lustration of a canonical penance from the soldier who shed the blood of his enemies in a national war.

Decline of the Saracens.

But this depraved people were preserved from destruction by the vices of their enemies, still more than by some intrinsic resources which they yet possessed. A rapid degeneracy enfeebled the victorious Moslems in their career. That irresistible enthusiasm, that earnest and disinterested zeal of the companions of Mohammed was in a great measure lost, even before the first generation had passed away. In the fruitful vallies of Damascus and Bassora, the Arabs of the desert forgot their abste-

(1) Ockley's History of the Saracens. Cardonne, Révolutions de l'Afrique et de l'Espagne. The former of these works is well known, and justly admired for its simplicity and picturesque details. Scarcely any narrative has ever excelled in beauty that of the death of Hosseiu. But these do not tend to render it more deserving of confidence. On the contrary, it may be laid down as a pretty general rule, that *circumstantiality*, which enhances the credibility of a witness, diminishes that of an historian, remote in time or situation. And I observe that Reiske, in his preface to Abulfeda, speaks of Wakidi, from whom Ockley's book is but a translation, as a mere fabulist.

mious habits. Rich from the tributes of an enslaved people, the Mohammedan sovereigns knew no employment of riches but in sensual luxury, and paid the price of voluptuous indulgence in the relaxation of their strength and energy. Under the reign of Moawiyah, the fifth khalif, an hereditary succession was substituted for the free choice of the faithful, by which the first representatives of the prophet had been elevated to power; and this regulation, necessary, as it plainly was, to avert in some degree the dangers of schism and civil war, exposed the kingdom to the certainty of being often governed by feeble tyrants. But no regulation could be more than a temporary preservative against civil war. The dissensions which still separate and render hostile the followers of Mohammed may be traced to the first events that ensued upon his death, to the rejection of his son-in-law Ali by the electors of Medina. Two reigns, those of Abubeker and Omar, passed in external glory and domestic reverence; but the old age of Othman was weak and imprudent, and the conspirators against him established the first among a hundred precedents of rebellion and regicide. Ali was now chosen; but a strong faction disputed his right; and the Saracen empire was for many years distracted with civil war among competitors who appealed, in reality, to no other decision than that of the sword. The family of Ommiyah succeeded at last in establishing an unresisted, if not an undoubted title. But rebellions were perpetually afterwards breaking out in that vast extent of dominion, till one of these revolters acquired by success a better name than rebel, and founded the dynasty of the Abbassides. 750

Khalifs of Bagdad.

Damascus had been the seat of empire under the Ommiades; it was removed by the succeeding family to their new city of Bagdad. There are not any names in the long line of khalifs, after the companions of Mohammed, more renowned in history than some of the earlier sovereigns who reigned in this capital, Almansor, Haroun Alraschid, and Almamùn. Their splendid palaces, their numerous guards, their treasures of gold and silver, the populousness and wealth of their cities, formed a striking contrast to the rudeness and poverty of the western nations in the same age. In their court, learning, which the first Moslem had despised as unwarlike, or rejected as profane, was held in honour (1). The khalif Almamùn, especially, was distinguished for his patronage of letters; the philosophical writings of Greece were eagerly sought and translated; the stars were numbered, the course of the planets was measured; the Arabians improved upon the science they borrowed, and returned it with abundant interest to Europe in the communication of numeral figures and the intellec-

(1) The Arabian writers date the origin of their literature (except those works of fiction which had always been popular) from the reign of Almansor, A. D. 753. Abulpharagius, p. 160. Gibbon, c. 52.

tual language of algebra (1). Yet the merit of the Abbassides has been exaggerated by adulation or gratitude. After all the vague praises of hireling poets, which have sometimes been repeated in Europe, it is very rare to read the history of an eastern sovereign unstained by atrocious crimes. No Christian government, except perhaps that of Constantinople, exhibits such a series of tyrants as the khalifs of Bagdad; if deeds of blood wrought through unbridled passion, or jealous policy, may challenge the name of tyranny. These are ill redeemed by ceremonious devotion, and acts of trifling, perhaps ostentatious humility; or even by the best attribute of Mohammedan princes, a rigorous justice in chastising the offences of others. Anecdotes of this description give as imperfect a sketch of an oriental sovereign, as monkish chroniclers sometimes draw of one in Europe, who founded monasteries and obeyed the clergy; though it must be owned that the former are in much better taste.

Though the Abbassides have acquired more celebrity, they never attained the real strength of their predecessors. Under the last of the house of Ommiyah, one command was obeyed almost along the whole diameter of the known world, from the banks of the Sihon to the utmost promontory of Portugal. But the revolution which changed the succession of khalifs produced another not less important. A fugitive of the vanquished family, by name Abdalrahman, arrived in Spain; and the Moslems of that country, not sharing in the prejudices which had stirred up the Persians in favour of the line of Abbas, and conscious that their remote situation entitled them to independence, proclaimed him khalif of Cordova. There could be little hope of reducing so distant a dependency; and the example was not unlikely to be imitated. In the reign of Haroun Alraschid, two principalities were formed in Africa; of the Aglabites who reigned over Tunis and Tripoli; and of the Edrisites in the western parts of Barbary. These yielded in about a century to the Fatimites, a more powerful dynasty, who afterwards established an empire in Egypt (2).

Separation of Spain and Africa.

Decline of the Khalifs.

The loss, however, of Spain and Africa, was the inevitable effect of that immensely extended dominion which their separation alone would not have enfeebled. But other revolutions awaited it at home. In the history of the Abbassides of Bagdad we read over again the decline of European monarchies, through their various symptoms of ruin; and find alternate analo-

(1) Several very recent publications contain interesting details on Saracen literature; Berington's Literary History of the Middle Ages. Mill's History of Mohammedanism, chap. vi. Turner's History of England, vol. i. Harris's Philological Arrangements is perhaps a book better known; and though it has since been much excelled, was one of the first contributions, in our own language, to this department, in which a great deal yet remains for the oriental scholars of Europe. Casiri's admirable catalogue of Arabic MSS. in the Escurial ought before this to have been followed up by a more accurate examination of their contents than it was possible for him to give. But sound literature and the Escurial!—what jarring ideas!

(2) For these revolutions, which it is not very easy to fix in the memory, consult Cardonne, who has made as much of them as the subject would bear.

gies to the insults of the barbarians towards imperial Rome in the fifth century, to the personal insignificance of the Merovingian kings, and to the feudal usurpations that dismembered the inheritance of Charlemagne. 1. Beyond the north-eastern frontier of the Saracen empire dwelt a warlike and powerful nation of the Tartar family, who defended the independence of Turkestan from the sea of Aral to the great central chain of mountains. In the wars which the khalifs or their lieutenants waged against them, many of these Turks were led into captivity, and dispersed over the empire. Their strength and courage distinguished them among a people grown effeminate by luxury; and that jealousy of disaffection among his subjects, so natural to an eastern monarch, might be an additional motive with the khalif Motassem to form bodies of guards out of these prisoners. But his policy was fatally erroneous. More rude, and even more ferocious than the Arabs, they contemned the feebleness of the khalifate, while they grasped at its riches. The son of Motassem, Motowakkel, was murdered in his palace by the barbarians of the north; and his fate revealed the secret of the empire, that the choice of its sovereigns had passed to their slaves. Degradation and death were frequently the lot of succeeding khalifs; but in the East, the son leaps boldly on the throne which the blood of his father has stained, and the prætorian guards of Bagdad rarely failed to render a fallacious obedience to the nearest heir of the house of Abbas. 2. In about one hundred years after the introduction of the Turkish soldiers, the sovereigns of Bagdad sunk almost into oblivion. Al Radi, who died in 940, was the last of these that officiated in the mosque, that commanded the forces in person, that addressed the people from the pulpit, that enjoyed the pomp and splendour of royalty (1). But he was the first who appointed, instead of a vizir, a new officer, a mayor, as it were, of the palace, with the title of Emir al Omra, commander of commanders, to whom he delegated by compulsion the functions of his office. This title was usually seized by active and martial spirits; it was sometimes hereditary, and in effect irrevocable by the khalifs, whose names hardly appear after this time in oriental annals. 3. During these revolutions of the palace, every province successively shook off its allegiance; new principalities were formed in Syria and Mesopotamia, as well as in Khorasan and Persia, till the dominion of the Commander of the Faithful was literally confined to the city of Bagdad and its adjacent territory. For a time, some of these princes, who had been appointed as governors by the khalifs, professed to respect his supremacy, by naming him in the public prayers, and upon the coin; but these tokens of dependence were gradually obliterated (2).

(1) Abulfeda, p. 261. Gibbon, c. 52. Modern Univ. Hist. vol. ii. Al Radi's command of the army is only mentioned by the last.

(2) The decline of the Saracens is fully discussed in the 52d chapter of Gibbon, which is, in itself, a complete philosophical dissertation upon this part of history.

Revival of the Greek Empire.

Such is the outline of Saracenic history for three centuries after Mohammed; one age of glorious conquest; a second of stationary, but rather precarious greatness; a third of rapid decline. The Greek empire meanwhile survived, and almost recovered from the shock it had sustained. Besides the decline of its enemies, several circumstances may be enumerated, tending to its preservation. The maritime province of Cilicia had been overrun by the Mohammedans; but between this and the Lesser Asia, Mount Taurus raises its massy buckler, spreading, as a natural bulwark, from the sea-coast of the ancient Pamphylia to the hilly district of Isauria, whence it extends in an easterly direction, separating the Cappadocian and Cilician plains, and after throwing off considerable ridges to the north and south, connects itself with other chains of mountains that penetrate far into the Asiatic continent. Beyond this barrier the Saracens formed no durable settlement, though the armies of Alraschid wasted the country as far as the Hellespont, and the city of Amorium in Phrygia was razed to the ground by Al Motassem. The position of Constantinople, chosen with a sagacity to which the course of events almost gave the appearance of prescience, secured her from any immediate danger on the side of Asia, and rendered her as little accessible to an enemy, as any city which valour and patriotism did not protect. Yet in the days of Arabian energy, she was twice attacked by great naval armaments; the first siege, or rather blockade, continued for seven years; the second, though shorter, was more terrible, and her walls, as well as her port, were actually invested by the combined forces of the khalif Waled, under his brother Moslema (1). The final discomfiture of these assailants shewed the resisting force of the empire, or rather of its capital; but perhaps the abandonment of such maritime enterprizes by the Saracens may be in some measure ascribed to the removal of their metropolis from Damascus to Bagdad. But the Greeks in their turn determined to dispute the command of the sea. By possessing the secret of an inextinguishable fire, they fought on superior terms: their wealth, perhaps their skill, enabled them to employ larger and better appointed vessels; and they ultimately expelled their enemies from the islands of Crete and Cyprus. By land, they were less desirous of encountering the Moslems. The science of tactics is studied by the pusillanimous, like that of medicine by the sick; and the Byzantine emperors, Leo and Constantine, have left written treatises on the art of avoiding defeat, of protracting contest, of resisting attack (2). But this timid policy, and even the purchase of armistices from the Saracens, were not ill calculated for the state of both nations; while

668

716

(1) Gibbon, c. 52.

(2) Gibbon, c. 53. Constantine Porphyrogenitus, in his advice to his son as to the administration of the empire, betrays a mind not ashamed to confess weakness and cowardice, and pleasing itself in petty arts to elude the rapacity, or divide the power of its enemies.

Constantinople temporized, Bagdad shook to her foundations; and the heirs of the Roman name might boast the immortality of their own empire, when they contemplated the dissolution of that which had so rapidly sprung up and perished. Amidst all the crimes and revolutions of the Byzantine government, and its history is but a series of crimes and revolutions, it was never dismembered by intestine war; a sedition in the army, a tumult in the theatre, a conspiracy in the palace, precipitated a monarch from the throne; but the allegiance of Constantinople was instantly transferred to his successor, and the provinces implicitly obeyed the voice of the capital. The custom too of partition, so baneful to the Latin kingdoms, and which was not altogether unknown to the Saracens, never prevailed in the Greek empire. It stood in the middle of the tenth century, as vicious indeed and cowardly, but more wealthy, more enlightened, and far more secure from its enemies, than under the first successors of Heraclius. For about one hundred years preceding there had been only partial wars with the Mohammedan potentates; and in these the emperors seem gradually to have gained the advantage, and to have become more frequently the aggressors. But the increasing distractions of the East encouraged two brave usurpers, Nicephorus Phocas and John Zimisces, to attempt the actual recovery of the lost provinces. They carried the Roman arms (one may use the term with less reluctance than usual) over Syria; Antioch and Aleppo were taken by storm, Damascus submitted; even the cities of Mesopotamia, beyond the ancient boundary of the Euphrates, were added to the trophies of Zimisces, who unwillingly spared the capital of the khalifate. From such distant conquests it was expedient, and indeed necessary, to withdraw; but Cilicia and Antioch were permanently restored to the empire. At the close of the tenth century the emperors of Constantinople possessed the best and greatest portion of the modern kingdom of Naples, a part of Sicily, the whole European dominions of the Ottomans, the province of Anatolia or Asia Minor, with some part of Syria and Armenia (1).

963—975

The Turks.

These successes of the Greek empire were certainly much rather due to the weakness of its enemies, than to any revival of national courage and vigour; yet they would probably have been more durable, if the contest had been only with the khalifate, or the kingdoms derived from it. But a new actor was to appear on the stage of Asiatic tragedy. The same Turkish nation, the slaves and captives from which had become arbiters of the sceptre of Bagdad, passed their original limits of the Iaxartes or Sihon. The sultans of Gazna, a dynasty whose splendid con-

(1) Gibbon, c. 52. and 53. The latter of these chapters contains as luminous a sketch of the condition of Greece, as the former does of Saracenic history. In each, the facts are not grouped historically according to the order of time, but philosophically, according to their relations.

quests were of very short duration, had deemed it politic to divide the strength of these formidable allies, by inviting a part of them into Khorasan. They covered that fertile province with their pastoral tents, and beckoned their compatriots to share the riches of the south. The Gaznevides fell the earliest victims; but Persia, violated in turn by every conqueror, was a tempting and unresisting prey. Togrol Bek, the founder of the Seljukian dynasty of Turks, overthrew the family of Bowides, who had long reigned at Ispahan, respected the pageant of Mohammedan sovereignty in the khalif of Bagdad, embraced with all his tribes the religion of the vanquished, and commenced the attack upon Christendom by an irruption into Armenia. His nephew and successor Alp Arslan defeated and took prisoner the emperor Romanus Diogenes; and the conquest of Asia Minor was almost completed by princes of the same family, the Seljukians of Rûm (1), who were permitted by Malek Shah, the third sultan of the Turks, to form an independent kingdom. Through their own exertions, and the selfish impolicy of rival competitors for the throne of Constantinople, who bartered the strength of the empire for assistance, the Turks became masters of the Asiatic cities and fortified passes; nor did there seem any obstacle to the invasion of Europe (2).

Their conquests. 1038

1071

The first Crusades.

In this state of jeopardy, the Greek empire looked for aid to the nations of the west, and received it in fuller measure than was expected, or perhaps desired. The deliverance of Constantinople was indeed a very secondary object with the crusaders. But it was necessarily included in their scheme of operations, which, though they all tended to the recovery of Jerusalem, must commence with the first enemies that lay on their line of march. The Turks were entirely defeated, their capital of Nice restored to the empire. As the Franks passed onwards, the emperor Alexius Comnenus trod on their footsteps, and secured to himself the fruits for which their enthusiasm disdained to wait. He regained possession of the strong places on the Ægean shores, of the defiles of Bithynia, and of the entire coast of Asia Minor, both on the Euxine and Mediterranean seas, which the Turkish armies, composed of cavalry and unused to regular warfare, could not recover (3). So much must undoubtedly be ascribed to the first crusade. But I think that the general effect of these expeditions has been overrated by those who consider them as having permanently retarded the progress of the Turkish power. The Christians in Palestine and Syria were hardly in contact with the Seljukian kingdom of Rûm, the only

Progress of the Greeks.

(1) Rûm, i. e. country of the Romans.

(2) Gibbon, c. 57. De Guignes, Hist. des Huns, t. ii. l. 2.

(3) It does not seem perfectly clear, whether the sea-coast, north and south, was re-annexed to the empire during the reign of Alexius, or of his gallant son, John Comnenus. But the doubt is hardly worth noticing.

enemies of the empire; and it is not easy to perceive, that their small and feeble principalities, engaged commonly in defending themselves against the Mohammedan princes of Mesopotamia, or the Fatimite khalifs of Egypt, could obstruct the arms of a sovereign of Iconium upon the Mæander or the Halys. Other causes are adequate to explain the equipoise in which the balance of dominion in Anatolia was kept during the twelfth century; the valour and activity of the two Comneni, John and Manuel, especially the former; and the frequent partitions and internal feuds, through which the Seljukians of Iconium, like all other oriental governments, became incapable of foreign aggression.

Capture of Constantinople by the Latins.

But whatever obligation might be due to the first crusaders from the Eastern empire was cancelled by their descendants one hundred years afterwards, when the fourth in number of those expeditions was turned to the subjugation of Constantinople itself. One of those domestic revolutions, which occur perpetually in Byzantine history, had placed an usurper on the imperial throne. The lawful monarch was condemned to blindness and a prison; but the heir escaped to recount his misfortunes to the fleet and army of crusaders, assembled in the Dalmatian port of Zara. This armament had been collected for the usual purposes, and through the usual motives, temporal and spiritual, of a crusade; the military force chiefly consisted of French nobles; the naval was supplied by the republic of Venice, whose doge commanded personally in the expedition. It was not apparently consistent with the primary object of retrieving the Christian affairs in Palestine, to interfere in the government of a Christian empire; but the temptation of punishing a faithless people, and the hope of assistance in their subsequent operations prevailed. They turned their prows up the Archipelago; and notwithstanding the vast population, and defensible strength of Constantinople, compelled the usurper to fly, and the citizens to surrender. But animosities springing from religious schism and national jealousy were not likely to be allayed by such remedies; the Greeks, wounded in their pride and bigotry, regarded the legitimate emperor as a creature of their enemies, ready to sacrifice their church, a stipulated condition of his restoration, to that of Rome. In a few months a new sedition and conspiracy raised another usurper in defiance of the crusaders' army encamped without the walls. The siege instantly recommenced; and after three months the city of Constantinople was taken by storm. The tale of pillage and murder is always uniform; but the calamities of ancient capitals, like those of the great, impress us more forcibly. Even now we sympathize with the virgin majesty of Constantinople, decked with the accumulated wealth of ages, and resplendent with the monuments of Roman empire and of Grecian art. Her populousness is estimated

1202

1204

beyond credibility: ten, twenty, thirty-fold that of London or Paris; certainly far beyond the united capitals of all European kingdoms in that age (1). In magnificence she excelled them more than in numbers; instead of the thatched roofs, the mud walls, the narrow streets, the pitiful buildings of those cities, she had marble and gilded palaces, churches and monasteries, the works of skilful architects, through nine centuries, gradually sliding from the severity of ancient taste into the more various and brilliant combinations of eastern fancy (2). In the libraries of Constantinople were collected the remains of Grecian learning; her forum and hippodrome were decorated with those of Grecian sculpture; but neither would be spared by undistinguished rapine; nor were the chiefs of the crusaders more able to appreciate the loss than their soldiery. Four horses, that breathe in the brass of Lysippus, were removed from Constantinople to the square of St. Mark at Venice; destined again to become the trophies of war, and to follow the alternate revolutions of conquest. But we learn from a contemporary Greek to deplore the fate of many other pieces of sculpture, which were destroyed in wantonness, or even coined into brass money (3).

Partition of the empire.

The lawful emperor and his son had perished in the rebellion that gave occasion to this catastrophe; and there remained no right to interfere with that of conquest. But the Latins were a promiscuous multitude, and what their independent valour had earned was not to be transferred to a single master. Though the name of emperor seemed necessary for the government of Constantinople, the unity of despotic power was very foreign to the principles and the interests of the crusaders. In their selfish schemes of aggrandizement, they tore in pieces the Greek empire. One fourth only was allotted to the emperor, three-eighths were the share of the republic of Venice, and the remainder was divided among the chiefs. Baldwin, count of Flanders, obtained the imperial title, with the feudal sovereignty over the minor principalities. A monarchy thus dismembered had little prospect of honour or durability. The Latin emperors of Constantinople were more contemptible and unfortunate, not so much from personal character as political weakness, than their predecessors; their vassals rebelled against sovereigns not more powerful than themselves; the Bulgarians, a nation, who, after being long formidable, had been subdued

(1) Ville Hardouin reckons the inhabitants of Constantinople at quatre cent mille hommes ou plus, by which Gibbon understands him to mean men of a military age. Le Beau allows a million for the whole population. Gibbon, vol. xi. p. 213. We should probably rate London, in 1204, too high at 40,000 souls. Paris had been enlarged by Philip Augustus, and stood on more ground than London. Delamare sur la Police, t. i. p. 76.

(2) O quanta civitas, exclaims Fulk of Chartres a hundred years before, nobilis et decora! quot monasteria quotque palatia sunt in eâ, opere mero fabrefacta! quot etiam in plateis vel in vicis opera ad spectandum mirabilia! Tædium est quidem magnum recitare, quanta sit ibi opulentia bonorum omnium, auri et argenti, palliorum multiformium, sacrarumque reliquiarum. Omni etiam tempore, navigio frequenti cuncta hominum necessaria illuc afferuntur. Du Chesne, Script. Rerum Gallicarum, t. iv. p. 822.

(3) Gibbon, c. 60.

by the imperial arms, and only recovered independence on the eve of the Latin conquest, insulted their capital; the Greeks viewed them with silent hatred, and hailed the dawning deliverance from the Asiatic coast. On that side of the Bosporus, the Latin usurpation was scarcely for a moment acknowledged; Nice became the seat of a Greek dynasty, who reigned with honour as far as the Mæander; and crossing into Europe, after having established their dominion throughout Romania and other provinces, expelled the last Latin emperors from Constantinople in less than sixty years from its capture.

The Greeks recover Constantinople.

1261.

During the reign of these Greeks at Nice, they had fortunately little to dread on the side of their former enemies, and were generally on terms of friendship with the Seljukians of Iconium. That monarchy indeed had sufficient objects of apprehension for itself. Their own example in changing the upland plains of Tartary for the cultivated vallies of the south was imitated in the thirteenth century by two successive hordes of northern barbarians. The Karismians, whose tents had been pitched on the lower Oxus and Caspian sea, availed themselves of the decline of the Turkish power to establish their dominion in Persia, and menaced, though they did not overthrow the kingdom of Iconium. A more tremendous storm ensued in the irruption of Moguls under the sons of Zingis Khan. From the farthest regions of Chinese Tartary, issued a race more fierce and destitute of civilization than those who had preceded, whose numbers were told by hundreds of thousands, and whose only test of victory was devastation. All Asia, from the sea of China to the Euxine, wasted beneath the locusts of the north. They annihilated the phantom of authority which still lingered with the name of khalif at Bagdad. They reduced into dependence and finally subverted the Seljukian dynasty of Persia, Syria, and Iconium. The Turks of the latter kingdom betook themselves to the mountainous country, where they formed several petty principalities, which subsisted by incursions into the territory of the Moguls or Greeks. The chief of one of these, named Othman, at the end of the thirteenth century, penetrated into the province of Bithynia, from which his posterity were never to withdraw (1).

Invasions of Asia by the Karismians, and Moguls.

1218

1272

1299

The empire of Constantinople had never recovered the blow it received at the hands of the Latins. Most of the islands in the Archipelago, and the provinces of proper Greece from Thessaly southward, were still possessed by those invaders. The wealth and naval power of the empire had passed into the hands of the maritime republics; Venice, Genoa, Pisa, and Barcelona were enriched by a commerce which they carried on as independent states within the precincts of Constantinople,

Declining state of the Greek empire.

(1) De Guignes, Hist. des Huns, t. iii. l. 15. Gibbon, c. 64.

scarcely deigning to solicit the permission or recognize the supremacy of its master. In a great battle fought under the walls of the city between the Venetian and Genoese fleets, the weight of the Roman empire, in Gibbon's expression, was scarcely felt in the balance of these opulent and powerful republics. Eight gallies were the contribution of the emperor Cantacuzene to his Venetian allies; and upon their defeat he submitted to the ignominy of excluding them for ever from trading in his dominions. Meantime the remains of the empire in Asia were seized by the independent Turkish dynasties, of which the most illustrious, that of the Ottomans, occupied the province of Bithynia. Invited by a Byzantine faction into Europe, about the middle of the fourteenth century, they fixed themselves in the neighbourhood of the capital, and in the thirty years' reign of Amurath I., subdued, with little resistance, the province of Romania, and the small Christian kingdoms that had been formed on the lower Danube. Bajazet, the successor of Amurath, reduced the independent emirs of Anatolia to subjection, and after long threatening Constantinople, invested it by sea and land. The Greeks called loudly upon their brethren of the west for aid against the common enemy of Christendom; but the flower of French chivalry had been slain or taken in the battle of Nicopolis in Bulgaria (1), where the king of Hungary, notwithstanding the heroism of these volunteers, was entirely defeated by Bajazet. The emperor Manuel left his capital with a faint hope of exciting the courts of Europe to some decided efforts, by personal representations of the danger; and, during his absence, Constantinople was saved, not by a friend indeed, but by a power more formidable to her enemies than to herself.

1352

The Ottomans. 1341

1396

The Tartars or Moguls of Timur.

The loose masses of mankind, that without laws, agriculture, or fixed dwellings, overspread the vast central regions of Asia, have, at various times, been impelled by necessity of subsistence, or through the casual appearance of a commanding genius, upon the domain of culture and civilization. Two principal roads connect the nations of Tartary with those of the west and south; the one into Europe along the sea of Azoph, and northern coast of the Euxine; the other across the interval between the Bukharian mountains and the Caspian into Persia. Four times at least within the period of authentic history, the Scythian tribes have taken the former course, and poured themselves into Europe, but each wave was less effectual than the preceding. The first of these was in the fourth and fifth centuries, for we may range those

(1) The Hungarians fled in this battle, and deserted their allies, according to the Mémoires de Boucicaut, c. 25. But Froissart, who seems a fairer authority, imputes the defeat to the rashness of the French. Part iv. ch. 79. The count de Nevers, (Jean Sans Peur, afterwards duke of Burgundy,) who commanded the French, was made prisoner with others of the royal blood, and ransomed at a very high price. Many of eminent birth and merit were put to death; a fate from which Boucicaut was saved by the interference of the count de Nevers, who might better himself have perished with honour on that occasion, than survived to plunge his country into civil war, and his name into infamy.

rapidly successive migrations of the Goths and Huns together, when the Roman empire fell to the ground, and the only boundary of barbarian conquest was the Atlantic ocean upon the shores of Portugal. The second wave came on with the Hungarians in the tenth century, whose ravages extended as far as the southern provinces of France. A third attack was sustained from the Moguls under the children of Zingis, at the same period as that which overwhelmed Persia. The Russian monarchy was destroyed in this invasion, and for two hundred years that great country lay prostrate under the yoke of the Tartars. As they advanced, Poland and Hungary gave little opposition; and the farthest nations of Europe were appalled by the tempest. But Germany was no longer as she had been in the anarchy of the tenth century; the Moguls were unused to resistance, and still less inclined to regular warfare; they retired before the emperor Frederic II., and the utmost points of their western invasion were the cities of Lignitz in Silesia, and Neustadt in Austria. In the fourth and last aggression of the Tartars, their progress in Europe is hardly perceptible; the Moguls of Timur's army could only boast the destruction of Azoph, and the pillage of some Russian provinces. Timur, the sovereign of these Moguls, and founder of their second dynasty, which has been more permanent and celebrated than that of Zingis, had been the prince of a small tribe, in Transoxiana, between the Gihon and Sirr, the doubtful frontier of settled and pastoral nations. His own energy and the weakness of his neighbours are sufficient to explain the revolution he effected. Like former conquerors, Togrol Bek and Zingis, he chose the road through Persia; and meeting little resistance from the disordered governments of Asia, extended his empire on one side to the Syrian coast, while by successes still more renowned, though not belonging to this place, it reached on the other to the heart of Hindostan. In his old age, the restlessness of ambition impelled him against the Turks of Anatolia. Bajazet hastened from the siege of Constantinople to a more perilous contest: his defeat and captivity, in the plains of Angora, clouded for a time the Ottoman crescent, and preserved the wreck of the Greek empire for fifty years longer.

1245

Defeat of Bajazet. 1402

The Moguls did not improve their victory; in the western parts of Asia, as in Hindostan, Timur was but a barbarian destroyer, though at Samarcand a sovereign and a legislator. He gave up Anatolia to the sons of Bajazet; but the unity of their power was broken; and the Ottoman kingdom, like those which had preceded, experienced the evils of partition and mutual animosity. For about twenty years an opportunity was given to the Greeks of recovering part of their losses; but they were incapable of making the best use of this advantage, and though they regained possession of part of Romania, did not extirpate a strong Turkish colony that held the city of Gallipoli in the Chersonesus.

Danger of Constantinople.

stoutest youths from their Bulgarian, Servian, or Albanian captives, who were educated in habits of martial discipline, and formed into a regular force with the name of Janizaries. After conquest had put an end to personal captivity, a tax of every fifth male child was raised upon the Christian population for the same purpose. The arm of Europe was thus turned upon herself; and the western nations must have contended with troops of hereditary robustness and intrepidity, whose emulous enthusiasm for the country that had adopted them was controuled by habitual obedience to their commanders (1).

Suspension of the Ottoman conquests.

Yet forty years after the fall of Constantinople, at the epoch of Charles VIII.'s expedition into Italy, the just apprehensions of European statesmen might have gradually subsided. Except the Morea, Negropont, and a few other unimportant conquests, no real progress had been made by the Ottomans. Mahomet II. had been kept at bay by the Hungarians; he had been repulsed with some ignominy by the knights of St. John from the island of Rhodes. A petty chieftain defied this mighty conqueror for twenty years in the mountains of Epirus; and the persevering courage of his desultory warfare with such trifling resources, and so little prospect of ultimate success, may justify the exaggerated admiration with which his contemporaries honoured the name of Scanderbeg. Once only the crescent was displayed on the Calabrian coast; but the city of Otranto remained but a year in the possession of Mahomet. On his death a disputed succession involved his children in civil war. Bajazet, the eldest, obtained the victory; but his rival brother Zizim fled to Rhodes, from whence he was removed to France, and afterwards to Rome. Apprehensions of this exiled prince seem to have dictated a pacific policy to the reigning sultan, whose character did not possess the usual energy of Ottoman sovereigns.

1480

(1) In the long declamation of Æneas Sylvius before the diet of Frankfort in 1454, he has the following contrast between the European and Turkish militia; a good specimen of the artifice with which an ingenious orator can disguise the truth, while he seems to be stating it most precisely. Conferamus nunc Turcos et vos invicem; et quid sperandum sit, si cum illis pugnetis, examinemus. Vos nati ad arma, illi tracti. Vos armati, illi inermes; vos gladios versatis, illi cultris utuntur; vos balistas tenditis, illi arcus trahunt; vos loricæ thoracesque protegunt, illos culcitra tegit; vos equos regitis, illi ab equis reguntur; vos nobiles in bellum ducitis, illi servos aut artifices cogunt, etc. etc. p. 683. This, however, had little effect upon the hearers, who were better judges of military affairs than the secretary of Frederic III. Pius II., or Æneas Sylvius, was a lively writer and a skilful intriguer. Long experience had given him a considerable insight into European politics; and his views are usually clear and sensible. Though not so learned as some popes, he knew much better what was going forward in his own time. But the vanity of displaying his eloquence betrayed him into a strange folly, when he addressed a very long letter to Mahomet II., explaining the catholic faith, and urging him to be baptized; in which case, so far from preaching a crusade against the Turks, he would gladly make use of their power to recover the rights of the church. Some of his inducements are curious, and must, if made public, have been highly gratifying to his friend, Frederic III. Quippe ut arbitramur, si Christianus fuisses, mortuo Ladislao Ungariæ et Bohemiæ rege, nemo præter te sua regna fuisset adeptus. Sperassent Ungari post diuturna bellorum mala sub tuo regimine pacem, et illos Bohemi secuti fuissent; sed cùm esses nostræ religionis hostis, elegerunt Ungari, etc. Epist. 396.

CHAPTER VII.

HISTORY OF ECCLESIASTICAL POWER DURING THE MIDDLE AGES.

Wealth of the Clergy—its Sources—Encroachments on Ecclesiastical Property—their Jurisdiction—arbitrative—coercive—their Political Power—Supremacy of the Crown—Charlemagne—Change after his Death, and Encroachments of the Church in the ninth Century—Primacy of the See of Rome—its early Stage—Gregory I.—Council of Frankfort—False Decretals—Progress of Papal Authority—Effects of Excommunication—Lothaire—State of the Church in the tenth Century—Marriage of Priests—Simony—Episcopal Elections—Imperial Authority over the Popes—Disputes concerning Investitures—Gregory VII. and Henry IV.—Concordat of Calixtus—Election by Chapters—general System of Gregory VII.—Progress of Papal Usurpations in the twelfth Century—Innocent III.—his Character and Schemes—continual Progress of the Papacy—Canon Law—Mendicant Orders—Dispensing Power—Taxation of the Clergy by the Popes—Encroachments on Rights of Patronage—Mandats, Reserves, etc.—general Disaffection towards the See of Rome in the thirteenth Century—Progress of Ecclesiastical Jurisdiction—Immunity of the Clergy in Criminal Cases—Restraints imposed upon their Jurisdiction—upon their Acquisition of Property—Boniface VIII.—his Quarrel with Philip the Fair—its Termination—gradual Decline of Papal Authority—Louis of Bavaria—Secession to Avignon and Return to Rome—Conduct of Avignon Popes—contested Election of Urban and Clement produces the great Schism—Council of Pisa—Constance—Basle—Methods adopted to restrain the Papal Usurpations in England, Germany, and France—Liberties of the Gallican Church—Decline of the Papal Influence in Italy.

Wealth of the church under the empire.

At the irruption of the northern invaders into the Roman empire, they found the clergy already endowed with extensive possessions. Besides the spontaneous oblations upon which the ministers of the Christian church had originally subsisted, they had obtained, even under the pagan emperors, by concealment or connivance, for the Roman law did not permit a tenure of lands in mortmain, certain immoveable estates, the revenues of which were applicable to their own maintenance, and that of the poor (1). These indeed were precarious, and liable to confiscation in times of persecution. But it was among the first effects of the conversion of Constantine to give not only a security, but a legal sanction to the territorial acquisitions of the church. The edict of Milan, in 313, recognizes the actual estates of ecclesiastical corporations (2). Another, published in 321, grants to all the subjects of the empire the power of bequeathing their property to the church (3). His own liberality and that of his successors set an example which did not want imitators. Passing rapidly from a condition of distress and persecution to the summit of prosperity, the church degenerated as rapidly from her ancient purity, and forfeited the respect of future ages in the same proportion as she acquired the blind veneration of her own. Covetousness, especially, became almost a characteristic vice. Valen-

(1) Giannone, Ist. di Napoli, l. ii. c. 8. Gibbon, c. 15. and c. 20. F. Paul's Treatise on Benefices, c. 4. The last writer does not wholly confirm this position; but a comparison of the three seems to justify my text.

(2) Giannone. Gibbon, ubi supra. F. Paul, c. 5.

(3) Id. Ibid.

tinian I., in 370, prohibited the clergy from receiving the bequest of women; a modification more discreditable than any general law could have been. And several of the fathers severely reprobate the prevailing avidity of their contemporaries (1).

Increase after its subversion.

The devotion of the conquering nations, as it was still less enlightened than that of the subjects of the empire, so was it still more munificent. They left indeed the worship of Hesus and Taranis in their forests; but they retained the elementary principles of that, and of all barbarous idolatry, a superstitious reverence for the priesthood, a credulity that seemed to invite imposture, and a confidence in the efficacy of gifts to expiate offences. Of this temper it is undeniable that the ministers of religion, influenced probably not so much by personal covetousness, as by zeal for the interest of their order, took advantage. Many of the peculiar and prominent characteristics in the faith and discipline of those ages appear to have been either introduced, or sedulously promoted for the purposes of sordid fraud. To those purposes conspired the veneration for relics, the worship of images, the idolatry of saints and martyrs, the religious inviolability of sanctuaries, the consecration of cemeteries, but above all, the doctrine of purgatory, and masses for the relief of the dead. A creed thus contrived, operating upon the minds of barbarians, lavish though rapacious, and devout though dissolute, naturally caused a torrent of opulence to pour in upon the church. Donations of land were continually made to the bishops, and, in still more ample proportion, to the monastic foundations. These had not been very numerous in the west till the beginning of the sixth century, when Benedict established his celebrated rule (2). A more remarkable show of piety, a more absolute seclusion from the world, forms more impressive and edifying, prayers and masses more constantly repeated, gave to the professed in these institutions a preference over the secular clergy.

The ecclesiastical hierarchy never received any territorial endowment by law, either under the Roman empire, or the kingdoms erected upon its ruins. But the voluntary munificence of princes as well as their subjects amply supplied the place of a more universal provision. Large private estates, or, as they were termed, patrimonies, not only within their own dioceses, but sometimes in distant countries, sustained the dignity of the principal sees, and especially that of Rome (3). The French monarchs of the first dynasty, the Carlovingian family and their great chief, the Saxon line of emperors, the kings of England and Leon, set hardly any bounds to their liberality, as numerous charters still extant in diplomatic collections attest. Many churches possessed seven or eight

(1) Giannone, ubi supra. F. Paul, c. 6.

(2) Giannone, l. iii. c. 6.; l. iv. c. 12. Treatise on Benefices, c. 8. Fleury, Huitième Discours sur l'Hist. Ecclésiastique. Muratori, Dissert. 68.

(3) St. Marc, t. i. p. 281. Giannone, l. iv. c. 12.

thousand mansi; one with but two thousand passed for only indifferently rich (1). But it must be remarked, that many of these donations are of lands uncultivated and unappropriated (2). The monasteries acquired legitimate riches by the culture of these deserted tracts, and by the prudent management of their revenues, which were less exposed to the ordinary means of dissipation than those of the laity. Their wealth continually accumulated enabled them to become the regular purchasers of landed estates, especially in the time of the crusades, when the fiefs of the nobility were constantly in the market for sale or mortgage (3).

Sometimes improperly acquired.

If the possessions of ecclesiastical communities had all been as fairly earned, we could find nothing in them to reprehend. But other sources of wealth were less pure; and they derived their wealth from many sources. Those who entered into a monastery threw frequently their whole estates into the common stock; and even the children of rich parents were expected to make a donation of land on assuming the cowl. Some gave their property to the church before entering on military expeditions; gifts were made by some to take effect after their lives, and bequests by many in the terrors of dissolution. Even those legacies to charitable purposes, which the clergy could with more decency and speciousness recommend, and of which the administration was generally confined to them, were frequently applied to their own benefit (4). They failed not, above all, to inculcate upon the wealthy sinner, that no atonement could be so acceptable to heaven, as liberal presents to its earthly delegates (5). To die without allotting a portion of worldly wealth to pious uses was accounted almost like suicide, or a refusal of the last sacraments; and hence intestacy passed for a sort of fraud upon the church, which she punished by taking the administration of the deceased's effects into her own hands. This however was peculiar to England, and seems to have been the case there only between the reigns of Henry III. and Edward III., when the bishop took a portion of the intestate's personal estate, for the advantage of the church and poor, instead of distributing it among his next of kin (6). The canonical penances imposed upon repentant offenders, extravagantly severe in themselves, were commuted for money or for im-

(1) Schmidt, t. ii. p. 205.

(2) Muratori, Dissert. 65. Du Cange, v. Eremus.

(3) Heeren, Essai sur les Croisades, p. 166. Schmidt, t. iii. p. 293.

(4) Primò sacris pastoribus data est facultas, ut hæreditatis portio in pauperes et egenos dispergeretur; sed sensim ecclesiæ quoque in pauperum censum venerunt, atque intestatæ gentis mens credita est proclivior in eas futura fuisse: quâ ex re pinguius illarum patrimonium evasit. Immò episcopi ipsi in rem suam ejusmodi consuetudinem interdùm convertebant: ac tributum evasit, quod anteà pii moris fuit. Muratori, Antiquitates Italiæ, t. v. dissert. 67.

(5) Muratori, Dissert. 67. (Antiquit. Italiæ, t. v. p. 1055.) has preserved a curious charter of an Italian count, who declares, that, struck with reflections upon his sinful state, he had taken counsel with certain religious, how he should atone for his offences. Accepto consilio ab iis, excepto si renunciare sæculo possem, nullum esse melius inter eleemosinarum virtutes, quàm si de propriis meis substantiis in monasterium concederem. Hoc consilium ab iis libenter, et ardentissimo animo ego accepi.

(6) Selden, vol. iii. p. 1676. Prynne's Constitutions, vol. iii. p. 18. Blackstone, vol. ii. chap. 32. In France, the lord of the fief seems to have taken the whole spoil. Du Cange, v. Intestatus.

moveable possessions; a fertile though scandalous source of monastic wealth, which the popes afterwards diverted into their own coffers, by the usage of dispensations and indulgences (1). The church lands enjoyed an immunity from taxes, though not in general from military service, when of a feudal tenure. But their tenure was frequently in what was called frankalmoign, without any obligation of service. Hence it became a customary fraud of lay proprietors to grant estates to the church which they received again by way of fief or lease, exempted from public burthens. And as if all these means of accumulating what they could not legitimately enjoy were insufficient, the monks prostituted their knowledge of writing to the purpose of forging charters in their own favour, which might easily impose upon an ignorant age, since it has required a peculiar science to detect them in modern times. Such rapacity might seem incredible in men cut off from the pursuits of life, and the hope of posterity, if we did not behold every day the unreasonableness of avarice, and the fervour of professional attachment (2).

Tithes.

As an additional source of revenue, and in imitation of the Jewish law, the payment of tithes was recommended or enjoined. These however were not applicable at first to the maintenance of a resident clergy. Parochial divisions, as they now exist, did not take place, at least in some countries, till several centuries after the establishment of Christianity (3). The rural churches, erected successively as the necessities of a congregation required, or the piety of a landlord suggested, were in fact a sort of chapels dependent on the cathedral, and served by itinerant ministers at the bishop's discretion. The bishop himself received the tithes, and apportioned them as he thought fit. A capitulary of Charlemagne however regulates their division into three parts; one for the bishop and his clergy, a second for the poor, and a third for the support of the fabric of the church (4). Some of the rural churches obtained by episcopal concessions the privileges of baptism and burial, which were accompanied with a fixed share of tithes, and seem to imply the residence of a minister. The same privileges were gradually extended to the rest; and thus a complete parochial division was finally established. But this was hardly the case in England till near the time of the conquest (5).

The slow and gradual manner in which parochial churches became independent appears to be of itself a sufficient answer to those who ascribe a great antiquity to the universal payment of tithes. There are however more direct proofs that this spe-

(1) Muratori, Dissert. 68.

(2) Muratori's 65th, 67th, and 68th Dissertations on the antiquities of Italy have furnished the principal materials of my text, with Father Paul's treatise on Benefices, especially chaps. 19. and 29.; Giannone, loc. cit. and l. iv. c. 12.; l. v. c. 6.; l. x. c. 12. Schmidt, Hist. des Allemands, t. i. p. 370.; t. ii. p. 203. 462.; t. iv. p. 202. Fleury, III. Discours sur l'Hist. Ecclés. Du Cange, voc. Precaria.

(3) Muratori, Dissert. 74., and Fleury, Institutions au Droit ecclésiastique, t. i. p. 162., refer the origin of parishes to the fourth century; but this must be limited to the most populous parts of the empire.

(4) Schmidt, t. ii. p. 206. This seems to have been founded on an ancient canon. F. Paul, c. 7.

(5) Collier's Ecclesiastical History, p. 229.

cies of ecclesiastical property was acquired not only by degrees, but with considerable opposition. We find the payment of tithes first enjoined by the canons of a provincial council in France near the end of the sixth century. From the ninth to the end of the twelfth, or even later, it is continually enforced by similar authority (1). Father Paul remarks, that most of the sermons preached about the eighth century inculcate this as a duty, and even seem to place the summit of Christian perfection in its performance (2). This reluctant submission of the people to a general and permanent tribute is perfectly consistent with the eagerness displayed by them in accumulating voluntary donations upon the church. Charlemagne was the first who gave the confirmation of a civil statute to these ecclesiastical injunctions; no one at least has, so far as I know, adduced any earlier law for the payment of tithes than one of his capitularies (3). But it would be precipitate to infer, either that the practice had not already gained ground to a considerable extent, through the influence of ecclesiastical authority, or on the other hand, that it became universal in consequence of the commands of Charlemagne (4). In the subsequent ages, it was very common to appropriate tithes, which had originally been payable to the bishop, either towards the support of particular churches, or, according to the prevalent superstition, to monastic foundations (5). These arbitrary consecrations, though the subject of complaint, lasted, by a sort of prescriptive right of the landholder, till about the year 1200. It was nearly at the same time that the obligation of paying tithes, which had been originally confined to those called predial, or the fruits of the earth, was extended, at least in theory, to every species of profit, and to the wages of every kind of labour (6).

Spoliation of church property.

Yet there were many hinderances that thwarted the clergy in their acquisition of opulence, and a sort of reflux, that set sometimes very strongly against them. In times of barbarous violence, nothing can thoroughly compensate for the inferiority of physical strength and prowess. The ecclesiastical history of the middle ages presents one long contention of fraud against robbery; of acquisitions made by the church through such means as I have described, and torn from her by lawless power. Those very men who, in the hour of sickness and impending death,

(1) Selden's History of Tithes, vol. iii. p. 1108. edit. Wilkins. Tithes are said by Giannone to have been enforced by some papal decrees in the sixth century, l. iii. c. 6.

(2) Treatise on Benefices, c. 11.

(3) Mably (Observations sur l'Hist. de France, t. i. p. 238. et 438.) has, with remarkable rashness, attacked the current opinion, that Charlemagne established the legal obligation of tithes, and denied that any of his capitularies bear such an interpretation. Those which he quotes have indeed a different meaning; but he has overlooked an express enactment in 789, (Baluzii Capitularia, t. i. p. 253.) which admits of no question; and I believe that there are others in confirmation.

(4) The grant of Ethelwolf in 855 seems to be the most probable origin of the right to tithes in England. Whether this law, for such it was, met with constant regard, is another question. It is said by Marina, that tithes were not legally established in Castile till the reign of Alfonso X. Ensayo sobre las Siete Partidas, c. 359.

(5) Selden, p. 1114. et seq. Coke, 2 Inst. p. 641.

(6) Selden's History of Tithes. Treatise on Benefices, c. 23. Giannone, l. x. c. 12.

showered the gifts of expiatory devotion upon her altars, had passed the sunshine of their lives in sacrilegious plunder. Notwithstanding the frequent instances of extreme reverence for religious institutions among the nobility, we should be deceived in supposing this to be their general character. Rapacity, not less insatiable than that of the abbots, was commonly united with a daring fierceness that the abbots could not resist. In every country, we find continual lamentation over the plunder of ecclesiastical possessions. Charles Martel is reproached with having given the first notorious example of such spoliation. It was not, however, commonly practised by sovereigns. But the evil was not the less universally felt. The parochial tithes, especially, as the hand of robbery falls heaviest upon the weak, were exposed to unlawful seizure. In the tenth and eleventh centuries nothing was more common than to see the revenues of benefices in the hands of lay impropriators, who employed curates at the cheapest rate; an abuse that has never ceased in the church (1). Several attempts were made to restore these tithes; but even Gregory VII. did not venture to proceed in it (2); and indeed it is highly probable that they might be held in some instances by a lawful title (3). Sometimes the property of monasteries was dilapidated by corrupt abbots, whose acts, however clandestine and unlawful, it was not easy to revoke. And both the bishops and convents were obliged to invest powerful lay protectors, under the name of advocates, with considerable fiefs, as the price of their assistance against depredators. But these advocates became too often themselves the spoilers, and oppressed the helpless ecclesiastics for whose defence they had been engaged (4).

If it had not been for these drawbacks, the clergy must, one would imagine, have almost acquired the exclusive property of the soil. They did enjoy nearly one half of England, and, I believe, a greater proportion in some countries of Europe (5). They had reached, perhaps, their zenith in respect of territorial property about the conclusion of the twelfth century (6). After that time, the disposition to enrich the clergy by pious donations grew more languid, and was put under certain legal restraints, to which I

(1) Du Cange, voc. Abbas.

(2) Schmidt, t. iv. p. 204. At an assembly held at St. Denis in 997, the bishops proposed to restore the tithes to the secular clergy: but such a tumult was excited by this attempt, that the meeting was broken up. Recueil des Historiens, t. xi. præfat. p. 212.

(3) Selden's Hist. of Tithes, p. 1136. The third council of Lateran restrains laymen from transferring their impropriated tithes to other laymen. Velly, Hist. de France, t. iii. p. 235. This seems tacitly to admit that their possession was lawful, at least by prescription.

(4) For the injuries sustained by ecclesiastical proprietors, see Muratori, Dissert. 72. Du Cange, V. Advocatus. Schmidt, t. ii. p. 229. 470.; t. iii. p. 290.; t. iv. p. 188. 202. Recueil des Historiens, t. xi. præfat. p. 184. Martenne, Thesaurus Anecdotorum, t. i. p. 595. Vaissette, Hist. de Languedoc, t. ii. p. 109., and Appendix, passim.

(5) Turner's Hist. of England, vol. ii. p. 413., from Avesbury. According to a calculation founded on a passage in Knyghton, the revenue of the English church in 1337 amounted to 730,000 marks per annum. Macpherson's Annals of Commerce, vol. i. p. 519. Histoire du Droit public Ecclés. Français, t. i. p. 214.

(6) The great age of monasteries in England was the reigns of Henry I., Stephen, and Henry II. Lyttleton's Henry II. vol. ii. p. 329. David I. of Scotland, contemporary with Henry II., was also a noted founder of monasteries. Dalrymple's Annals.

shall hereafter advert; but they became rather more secure from forcible usurpations.

Ecclesiastical jurisdiction.

The acquisitions of wealth by the church were hardly so remarkable, and scarcely contributed so much to her greatness, as those innovations upon the ordinary course of justice, which fall under the head of ecclesiastical jurisdiction and immunity. It is hardly, perhaps, necessary to caution the reader, that rights of territorial justice, possessed by ecclesiastics in virtue of their fiefs, are by no means included in this description. Episcopal jurisdiction, properly so called, may be considered as depending upon the choice of litigant parties, upon their condition, and upon the subject matter of their differences.

Arbitrative.

1. The arbitrative authority of ecclesiastical pastors, if not coeval with Christianity, grew up very early in the church, and was natural, or even necessary, to an insulated and persecuted society (1). Accustomed to feel a strong aversion to the imperial tribunals, and even to consider a recurrence to them as hardly consistent with their profession, the early Christians retained somewhat of a similar prejudice even after the establishment of their religion. The arbitration of their bishops still seemed a less objectionable mode of settling differences. And this arbitrative jurisdiction was powerfully supported by a law of Constantine, which directed the civil magistrate to enforce the execution of episcopal awards. Another edict, ascribed to the same emperor, and annexed to the Theodosian code, extended the jurisdiction of the bishops to all causes which either party chose to refer to it, even where they had already commenced in a secular court, and declared the bishop's sentence not subject to appeal. This edict has clearly been proved to be a forgery. It is evident, by a novel of Valentinian III., about 450, that the church had still no jurisdiction in questions of a temporal nature, except by means of the joint reference of contending parties. Some expressions, indeed, used by the emperor seem intended to repress the spirit of encroachment upon the civil magistrates, which had probably begun to manifest itself. Charlemagne, however, deceived by the spurious constitution in the Theodosian code, repeats all its absurd and enormous provisions in one of his capitularies (2). But it appears so inconceivable, that an enlightened sovereign should deliberately place in the hierarchy this absolute controul over his own magistrates, that one might be justified in suspecting some kind of fraud to have been practised upon him, or at least that he was not thoroughly aware of the extent of his concession. Certain it is, that we do not find the church, in her most arrogant tem-

(1) 1 Corinth. c. iv. The word ἐξουθενημένους, rendered in our version "of no reputation," has been interpreted by some to mean, persons destitute of coercive authority, referees. The passage at least tends to discourage suits before a secular judge.

(2) Baluzii Capitularia, t. i. p. 365.

per, asserting the full privileges contained in this capitulary (1).

Coercive over the clergy in civil

2. If it was considered almost as a general obligation upon the primitive Christians to decide their civil disputes by internal arbitration, much more would this be incumbent upon the clergy. The canons of several councils, in the fourth and fifth centuries, sentence a bishop or priest to deposition, who should bring any suit, civil or even criminal, before a secular magistrate. This must, it should appear, be confined to causes where the defendant was a clerk; since the ecclesiastical court had hitherto no coercive jurisdiction over the laity. It was not so easy to induce laymen, in their suits against clerks, to prefer the episcopal tribunal. The emperors were not at all disposed to favour this species of encroachment till the reign of Justinian, who ordered civil suits against ecclesiastics to be carried only before the bishops. Yet this was accompanied by a provision, that a party dissatisfied with the sentence might apply to the secular magistrate, not as an appellant, but a coordinate jurisdiction; for if different judgments were given in the two courts, the process was ultimately referred to the emperor (2). But the early Merovingian kings adopted the exclusive jurisdiction of the bishop over causes wherein clerks were interested, without any of the checks which Justinian had provided. Many laws enacted during their reigns, and under Charlemagne, strictly prohibit the temporal magistrates from entertaining complaints against the children of the church.

and criminal suits.

This jurisdiction over the civil causes of clerks was not immediately attended with an equally exclusive cognizance of criminal offences imputed to them, wherein the state is so deeply interested, and the church could inflict so inadequate a punishment. Justinian appears to have reserved such offences for trial before the imperial magistrate, though with a material provision that the sentence against a clerk should not be executed without the consent of the bishop, or the final decision of the emperor. The bishop is not expressly invested with this controuling power by the laws of the Merovingians; but they enact that he must be present at the trial of one of his clerks; which probably was intended to declare the necessity of his concurrence in the judgment. The episcopal order was indeed absolutely exempted from secular jurisdiction by Justinian; a privilege which it had vainly endeavoured to establish under the earlier emperors. France permitted the same immunity; Chilperic, one of the most arbitrary of her kings, did not venture to charge some of his bishops with treason, except before a council of their brethren. Finally, Charlemagne seems to have extended to the whole body of the clergy an absolute

(1) Gibbon, c. xx. Giannone, l. ii. c. 8.; l. iii. c. 6.; l. vi. c. 7. Schmidt, t. ii. p. 208. Fleury, septième Discours, and Institutions au Droit Ecclésiastique, t. ii. p. 1. Mémoires de l'Académie des Inscriptions, t. xxxvii. p. 566.

(2) This was also established about the same time by Athalaric, king of the Ostrogoths, and of course affected the popes, who were his subjects. St. Marc, t. i. p. 60. Fleury, Hist. Ecclés. t. vii. p. 292.

exemption from the judicial authority of the magistrate (1).

Over particular causes.

3. The character of a cause, as well as of the parties engaged, might bring it within the limits of ecclesiastical jurisdiction. In all questions simply religious, the church had an original right of decision; in those of a temporal nature, the civil magistrate had, by the imperial constitutions, as exclusive an authority (2). Later ages witnessed strange innovations in this respect, when the spiritual courts usurped, under sophistical pretences, almost the whole administration of justice. But these encroachments were not, I apprehend, very striking till the twelfth century; and as about the same time measures, more or less vigorous and successful, began to be adopted in order to restrain them, I shall defer this part of the subject for the present.

Political power of clergy.

In this sketch of the riches and jurisdiction of the hierarchy, I may seem to have implied their political influence, which is naturally connected with the two former. They possessed, however, more direct means of acquiring temporal power. Even under the Roman emperors they had found their road into palaces; they were sometimes ministers, more often secret counsellors, always necessary, but formidable allies, whose support was to be conciliated, and interference to be respected. But they assumed a far more decided influence over the new kingdoms of the west. They were entitled, in the first place, by the nature of those free governments, to a privilege unknown under the imperial despotism, that of assisting in the deliberative assemblies of the nation. Councils of bishops, such as had been convoked by Constantine and his successors, were limited in their functions to decisions of faith, or canons of ecclesiastical discipline. But the northern nations did not so well preserve the distinction between secular and spiritual legislation. The laity seldom, perhaps, gave their suffrage to the canons of the church; but the church was not so scrupulous as to trespassing upon the province of the laity. Many provisions are found in the canons of national and even provincial councils, which relate to the temporal constitution of the state. Thus one held at Calcluith, (an unknown place in England,) in 787, enacted that none but legitimate princes should be raised to the throne, and not such as were engendered in adultery or incest. But it is to be observed that although this synod was strictly ecclesiastical, being summoned by the pope's legate, yet the kings of Mercia and Northumberland, with many of their

(1) Mémoires de l'Académie, ubi supra. Giannone, l. iii. c. 6. Schmidt, t. ii. p. 236. Fleury, ubi supra. Some of these writers do not state the law of Charlemagne so strongly. Nevertheless the words of a capitulary in 789, Ut clerici ecclesiastici ordinis si culpam incurrerint, apud ecclesiasticos judicentur, non apud sæculares, are sufficiently general: (Baluz. Capitul. t. i. p. 227.) and the same is expressed still more forcibly in the collection published by Ansegisus under Louis the Debonair. (Id. p. 904. and 1115.) See other proofs in Fleury, Hist. Ecclés. t. ix. p. 607.

(2) Quoties de religione agitur, episcopos oportet judicare; alteras verò causas quæ ad ordinarios cognitores vel ad usum publici juris pertinent, legibus oportet audiri. Lex Arcadii et Honorii, apud Mém. de l'Académie, t. xxxix. p. 571.

nobles, confirmed the canons by their signature. As for the councils held under the Visigoth kings of Spain during the seventh century, it is not easy to determine whether they are to be considered as ecclesiastical or temporal assemblies (1). No kingdom was so thoroughly under the bondage of the hierarchy as Spain (2). The first dynasty of France seem to have kept their national convention, called the Field of March, more distinct from merely ecclesiastical councils.

The bishops acquired and retained a great part of their ascendency by a very respectable instrument of power, intellectual superiority. As they alone were acquainted with the art of writing, they were naturally entrusted with political correspondence and with the framing of the laws. As they alone knew the elements of a few sciences, the education of royal families devolved upon them as a necessary duty. In the fall of Rome, their influence upon the barbarians wore down the asperities of conquest, and saved the provincials half the shock of that tremendous revolution. As captive Greece is said to have subdued her Roman conqueror, so Rome, in her own turn of servitude, cast the fetters of a moral captivity upon the fierce invaders of the north. Chiefly through the exertions of the bishops, whose ambition may be forgiven for its effects, her religion, her language, in part even her laws, were transplanted into the courts of Paris and Toledo, which became a degree less barbarous by imitation (3).

Supremacy of the state.

Notwithstanding, however, the great authority and privileges of the church, it was decidedly subject to the supremacy of the crown, both during the continuance of the western empire, and after its subversion. The emperors convoked, regulated, and dissolved universal councils; the kings of France and Spain exercised the same right over the synods of their national churches (4). The Ostrogoth kings of Italy fixed by their edicts the limits within which matrimony was prohibited on account of consanguinity, and granted dispensations from them (5). Though the Roman emperors left episcopal elections to the clergy and people of the diocese, in which they were followed by the Ostrogoths and Lombards, yet they often interfered so far as to confirm a decision, or to determine a contest. The kings of France went farther, and seem to have invariably either nominated the bishops, or, what was nearly tantamount, recommended their own candidate to the electors.

especially of Charlemagne.

But the sovereign who maintained with the greatest vigour his ecclesiastical supremacy was Charlemagne.

(1) Marina, Teoria de las Cortes, t. i. p. 9.

(2) See instances of the temporal power of the Spanish bishops in Fleury, Hist. Ecclés. t. viii. p. 368. 397.; t. ix. p. 68, etc.

(3) Schmidt, t. i. p. 365.

(4) Encyclopédie, art. Concile. Schmidt, t. i. p. 384. De Marca, De concordantiâ sacerdotii et imperii, l. ii. c. 9. 11.; et l. iv. passim. The last of these sometimes endeavours to extenuate the royal supremacy, but his own work furnishes abundant evidence of it; especially l. vi. c. 19, etc. For the ecclesiastical independence of Spain, down to the eleventh century, see Marina, Ensayo sobre las Siete Partidas, c. 322. etc.; and De Marca, l. vi. c. 23.

(5) Giannone, l. iii. c. 6.

Most of the capitularies of his reign relate to the discipline of the church; principally indeed taken from the ancient canons, but not the less receiving an additional sanction from his authority (1). Some of his regulations, which appear to have been original, are such as men of high church principles would, even in modern times, deem infringements of spiritual independence; that no legend of doubtful authority should be read in the churches, but only the canonical books, and that no saint should be honoured whom the whole church did not acknowledge. These were not passed in a synod of bishops, but enjoined by the sole authority of the emperor, who seems to have arrogated a legislative power over the church, which he did not possess in temporal affairs. Many of his other laws relating to the ecclesiastical constitution are enacted in a general council of the lay nobility as well as of prelates, and are so blended with those of a secular nature, that the two orders may appear to have equally consented to the whole. His father Pepin, indeed, left a remarkable precedent in a council held in 744, where the Nicene faith is declared to be established, and even a particular heresy condemned, with the consent of the bishops and nobles. But whatever share we may imagine the laity in general to have had in such matters, Charlemagne himself did not consider even theological decisions as beyond his province; and, in more than one instance, manifested a determination not to surrender his own judgment, even in questions of that nature, to any ecclesiastical authority.

This part of Charlemagne's conduct is duly to be taken into the account, before we censure his vast extension of ecclesiastical privileges. Nothing was more remote from his character than the bigotry of those weak princes, who have suffered the clergy to reign under their names. He acted upon a systematic plan of government, conceived by his own comprehensive genius, but requiring too continual an application of similar talents for durable execution. It was the error of a superior mind, zealous for religion and learning, to believe that men, dedicated to the functions of the one, and possessing what remained of the other, might, through strict rules of discipline, enforced by the constant vigilance of the sovereign, become fit instruments to reform and civilize a barbarous empire. It was the error of a magnanimous spirit to judge too favourably of human nature, and to presume, that great trusts would be fulfilled, and great benefits remembered.

Pretensions of the hierarchy in the ninth century.

It is highly probable, indeed, that an ambitious hierarchy did not endure without reluctance this imperial supremacy of Charlemagne, though it was not expedient for them to resist a prince so formidable, and from whom they had so much to expect. But their dissatisfaction

(1) Baluzii Capitularia, passim. Schmidt, t. ii. p. 232. Gaillard, Vie de Charlemagne. t. iii.

at a scheme of government incompatible with their own objects of perfect independence produced a violent recoil under Louis the Debonair, who attempted to act the censor of ecclesiastical abuses with as much earnestness as his father, though with very inferior qualifications for so delicate an undertaking. The bishops accordingly were among the chief instigators of those numerous revolts of his children, which harassed this emperor. They set, upon one occasion, the first example of an usurpation which was to become very dangerous to society, the deposition of sovereigns by ecclesiastical authority. Louis, a prisoner in the hands of his enemies, had been intimidated enough to undergo a public penance; and the bishops pretended that, according to a canon of the church, he was incapable of returning afterwards to a secular life, or preserving the character of sovereignty (1). Circumstances enabled him to retain the empire, in defiance of this sentence; but the church had tasted the pleasure of trampling upon crowned heads, and was eager to repeat the experiment. Under the disjointed and feeble administration of his posterity in their several kingdoms, the bishops availed themselves of more than one opportunity to exalt their temporal power. Those weak Carlovingian princes, in their mutual animosities, encouraged the pretensions of a common enemy. Thus Charles the Bald, and Louis of Bavaria, having driven their brother Lothaire from his dominions, held an assembly of some bishops, who adjudged him unworthy to reign, and after exacting a promise from the two allied brothers to govern better than he had done, permitted and commanded them to divide his territories (2). After concurring in this unprecedented encroachment, Charles the Bald had little right to complain when, some years afterwards, an assembly of bishops declared himself to have forfeited his crown, released his subjects from their allegiance, and transferred his kingdom to Louis of Bavaria. But, in truth, he did not pretend to deny the principle which he had contributed to maintain. Even in his own behalf, he did not appeal to the rights of sovereigns, and of the nation whom they represent. "No one," says this degenerate grandson of Charlemagne, "ought to have degraded me from the throne to which I was consecrated, until at least I had been heard and judged by the bishops, through whose ministry I was consecrated, who are called the thrones of God, in which God sitteth,

(1) Habitu sæculi se exuens habitum pœnitentis per impositionem manuum episcoporum suscepit; ut post tantam talemque pœnitentiam nemo ultrà ad militiam sæcularem redeat. Acta exauctorationis Ludovici, apud Schmidt, t. ii. p. 68. There was a sort of precedent, though not, I think, very apposite, for this doctrine of implied abdication, in the case of Wamba, king of the Visigoths in Spain, who, having been clothed with a monastic dress, according to a common superstition, during a dangerous illness, was afterwards adjudged by a council incapable of resuming his crown; to which he voluntarily submitted. The story, as told by an original writer, quoted in Baronius ad A. D. 681, is too obscure to warrant any positive inference; though I think we may justly suspect a fraudulent contrivance between the bishops and Ervigius, the successor of Wamba. The latter, besides his monastic attire, had received the last sacrament; after which he might be deemed civilly dead. Fleury, troisième Discours sur l'Hist. Ecclésiast., puts this case too strongly, when he tells us, that the bishops *deposed* Wamba; it may have been a voluntary abdication, influenced by superstition, or, perhaps, by disease.

(2) Schmidt, t. ii. p. 77. Velly, t. ii. p. 61.; see too, p. 74.

and by whom he dispenses his judgments; to whose paternal chastisement I was willing to submit, and do still submit myself (1)."

These passages are very remarkable, and afford a decisive proof that the power obtained by national churches, through the superstitious prejudices then received, and a train of favourable circumstances, was as dangerous to civil government as the subsequent usurpation of the Roman pontiff, against which Protestant writers are apt too exclusively to direct their animadversions. Voltaire, I think, has remarked, that the ninth century was the age of the bishops, as the eleventh and twelfth were of the popes. It seemed as if Europe was about to pass under as absolute a domination of the hierarchy, as had been exercised by the priesthood of ancient Egypt, or the druids of Gaul. There is extant a remarkable instrument, recording the election of Boson king of Arles, by which the bishops alone appear to have elevated him to the throne, without any concurrence of the nobility (2). But it is inconceivable, that such could have really been the case; and if the instrument is genuine, we must suppose it to have been framed in order to countenance future pretensions. For the clergy, by their exclusive knowledge of Latin, had it in their power to mould the language of public documents for their own purposes; a circumstance which should be cautiously kept in mind when we peruse instruments drawn up during the dark ages.

It was with an equal defiance of notorious truth, that the bishop of Winchester, presiding as papal legate at an assembly of the clergy in 1141, during the civil war of Stephen and Matilda, asserted the right of electing a king of England to appertain principally to that order; and by virtue of this unprecedented claim raised Matilda to the throne (3). England, indeed, has been obsequious, beyond most other centuries, to the arrogance of her hierarchy; especially during the Anglo-Saxon period, when the nation was sunk in ignorance and effeminate superstition. Every one knows the story of King Edwy, in some form or other, though I believe it impossible to ascertain the real circumstances of that controverted anecdote. But, upon the supposition least favourable to the king, the behaviour of Archbishop Odo and St. Dunstan was an intolerable outrage of spiritual tyranny (4).

(1) Schmidt, t. ii. p. 217. Voltaire, Velly, Gaillard, etc.

(2) Recueil des Historiens, t. ix. p. 304.

(3) Ventilata est causa, says the Legate, coram majori parte cleri Angliæ, ad cujus jus potissimùm spectat principem eligere, simulque ordinare. Invocatâ itaque primò in auxilium Divinitate, filiam pacifici regis, etc., in Angliæ Normanniæque dominam eligimus, et ei fidem et manutenementum promittimus. Gul. Malmsb. p. 188.

(4) Two living writers of the Roman Catholic communion, Dr. Milner, in his History of Winchester, and Mr. Lingard, in his Antiquities of the Anglo-Saxon church, contend that Elgiva, whom some Protestant historians are willing to represent as the queen of Edwy, was but his mistress; and seem inclined to justify the conduct of Odo and Dunstan towards this unfortunate couple. They are unquestionably so far right, that few, if any, of those writers, who have been quoted as authorities in respect of this story, speak of the lady as a queen or lawful wife. I must, therefore, strongly reprobate the conduct of Dr. Henry, who, calling Elgiva queen, and asserting that she was married, refers, at the bottom of his page, to William of Malmsbury, and other chroniclers, who give a totally opposite account; especially as he does not intimate, by a single expression, that the nature of her connexion with the king was equivocal. Such a practice, when it proceeds, as I fear it did in this

Rise of the papal power. Its commencement.

But while the prelates of these nations, each within his respective sphere, were prosecuting their system of encroachment upon the laity, a new scheme was secretly forming within the bosom of the church, to enthral both that and the temporal governments of the world under an ecclesiastical monarch. Long before the earliest epoch that can be fixed for *modern* history, and, indeed, to speak fairly, almost as far back as ecclesiastical testimonies can carry us, the bishops of Rome had been venerated as first in rank among the rulers of the church. The nature of this primacy is doubtless a very controverted subject. It is, however, reduced by some moderate catholics to little more than a precedency attached to the see of Rome in consequence of its foundation by the chief of the apostles, as well as the dignity of the imperial city (1). A sort of general superintendence was admitted as an attribute of this primacy, so that the bishops of Rome were entitled, and indeed bound, to remonstrate, when any error or irregularity came to their knowledge, especially in the western churches, a greater part of which had been planted by them, and were connected, as it were by filiation, with the common capital of the Roman empire and of Christendom (2). Various causes had a tendency to prevent the bishops of Rome from augmenting their authority in the east, and even to diminish that which they had occasionally exercised; the institution of patriarchs at Antioch, Alexandria, and afterwards at Constantinople, with extensive rights of jurisdiction; the difference of rituals and discipline; but above all, the many disgusts taken by the Greeks, which ultimately produced an irreparable schism between the two churches in the ninth century. But within the pale of the Latin church, every succeeding age enhanced the power and dignity of the Roman see. By the constitution of the church, such at least as it became in the fourth century, its divisions being arranged in conformity to those

nstance, not from oversight, but from prejudice, is a glaring violation of historical integrity, and tends to render the use of references, that great improvement of modern history, a sort of fraud upon the reader. But the fact itself, one certainly of little importance, is, in my opinion, not capable of being proved or disproved. The authorities, as hey are called, that is, the passages in monkish writers which mention this transaction, are neither sufficiently circumstantial, nor consistent, not impartial, nor contemporaneous, to afford ground for rational belief; or at least, there must always remain a strong shade of uncertainty. And it is plain, that different reports of the story prevailed, so as to induce some to imagine, that there were two Elgivas, one queen, the other concubine. But the monkish chroniclers, *experto credite*, are not entitled to so much ceremony.

(1) These foundations of the Roman primacy are indicated by Valentinian III., a great favourer of that see, in a novel of the year 455: Cùm igitur sedis apostolicæ primatum B. Petri meritum, qui est princeps sacerdotalis coronæ, et Romanæ dignitas civitatis, sacræ etiam synodi firmavit auctoritas. The last words allude to the sixth canon of the Nicene council, which establishes, or recognizes, the patriarchal supremacy, in their respective districts, of the churches of Rome, Antioch, and Alexandria. De Marca, de Concordantiâ Sacerdotii et Imperii, l. i. c. 8. At a much earlier period, Irenæus rather vaguely, and Cyprian more positively, admit, or rather assert, the primacy of the church of Rome, which the latter seems even to have considered as a kind of centre of Catholic unity, though he resisted every attempt of that church to arrogate a controuling power. See his treatise De Unitate Ecclesiæ.

(2) Dupin, De antiquâ Ecclesiæ Disciplinâ, p. 306. et seq. Histoire du Droit public ecclésiastique Français, p. 149. The opinion of the Roman see's supremacy, though apparently rather a vague and general notion, as it still continues in those Catholics who deny its infallibility, seems to have prevailed very much in the fourth century. Fleury brings remarkable proofs of this from the writings of Socrates, Sozomen, Ammianus Marcellinus, and Optatus. Hist. Ecclés. t. iii. p. 282. 330. 449.; t. iv. p. 227.

of the empire, every province ought to have its metropolitan, and every vicariate its ecclesiastical exarch or primate. The bishop of Rome presided, in the latter capacity, over the Roman vicariate, comprehending southern Italy, and the three chief Mediterranean islands. But as it happened, none of the ten provinces forming this division had any metropolitan; so that the popes exercised all metropolitical functions within them, such as the consecration of bishops, the convocation of synods, the ultimate decision of appeals, and many other sorts of authority. These provinces are sometimes called the Roman patriarchate; the bishop of Rome having always been reckoned one, generally indeed the first, of the patriarchs; each of whom was at the head of all the metropolitans within his limits, but without exercising those privileges which by the ecclesiastical constitution appertained to the latter. Though the Roman patriarchate, properly so called, was comparatively very small in extent, it gave its chief, for the reason mentioned, advantages in point of authority which the others did not possess (1).

Patriarchate of Rome.

I may perhaps appear to have noticed circumstances interesting only to ecclesiastical scholars. But it is important to apprehend this distinction of the patriarchate from the primacy of Rome, because it was by extending the boundaries of the former, and by applying the maxims of her administration in the south of Italy to all the western churches, that she accomplished the first object of her scheme of usurpation, in subverting the provincial system of government under the metropolitans. Their first encroachment of this kind was in the province of Illiricum, which they annexed in a manner to their own patriarchate, by not permitting any bishops to be consecrated without their consent (2). This was before the end of the fourth century. Their subsequent advances were, however, very gradual. About the middle of the sixth century, we find them confirming the elections of archbishops of Milan (3). They came by degrees to exercise, though not always successfully, and seldom without opposition, an appellant jurisdiction over the causes of bishops deposed or censured in provincial synods. This, indeed, had been granted, if we believe the fact, by the canons of a very early council, that of Sardica, in 347, so far as to permit the pope to order a revision of the process, but not to annul the sentence (4). Valentinian III., influenced by Leo the

(1) Dupin, De antiquâ Eccles. Disciplinâ, p. 39. etc. Giannone, Ist. di Napoli, l. ii. c. 8.; l. iii. c. 6. De Marca, l. i. c. 7. et alibi. There is some disagreement among these writers as to the extent of the Roman patriarchate, which some suppose to have even at first comprehended all the western churches, though they admit that, in a more particular sense, it was confined to the vicariate of Rome.

(2) Dupin, p. 66. Fleury, Hist. Ecclés. t. v. p. 373. The ecclesiastical province of Illyricum included Macedonia. Siricius, the author of this encroachment, seems to have been one of the first usurpers. In a letter to the Spanish bishops, (A. D. 375.) he exalts his own authority very high. De Marca, l. i. c. 8.

(3) St. Marc, t. i. p. 139. 153.

(4) Dupin, p. 109. De Marca, l. vi. c. 14. These canons have been questioned, and Dupin does not seem to lay much stress on their authority, though I do not perceive that either he, or Fleury, (Hist. Ecclés. t. iii. p. 372.) doubts their genuineness. Sardica was a city of Illyricum, which the translator of Mosheim has confounded with Sardes.

Consultations or references to the bishop of

Great, one of the most ambitious of pontiffs, had gone a great deal farther, and established almost an absolute judicial supremacy in the Holy See (1). But the metropolitans were not inclined to surrender their prerogatives: and upon the whole, the papal authority had made no decisive progress in France, or perhaps any where beyond Italy, till the pontificate of Gregory I.

Gregory I. 590—604

This celebrated person was not distinguished by learning, which he affected to depreciate, nor by his literary performances, which the best critics consider as below mediocrity, but by qualities more necessary for his purpose, intrepid ambition and unceasing activity. He maintained a perpetual correspondence with the emperors and their ministers, with the sovereigns of the western kingdoms, with all the hierarchy of the catholic church; employing, as occasion dictated, the language of devotion, arrogance, or adulation (2). Claims hitherto disputed, or half preferred, assumed under his hands a more definite form; and nations too ignorant to compare precedents or discriminate principles, yielded to assertions confidently made by the authority which they most respected. Gregory dwelt more than his predecessors upon the power of the keys, exclusively or at least principally committed to St. Peter, which had been supposed in earlier times, as it is now by the Gallican catholics, to be inherent in the general body of bishops, joint sharers of one indivisible episcopacy. And thus the patriarchal rights, being manifestly of mere ecclesiastical institution, were artfully confounded, or as it were merged, in the more paramount supremacy of the papal chair. From the time of Gregory, the popes appear in a great measure to have thrown away that scaffolding, and relied in preference on the pious veneration of the people, and on the opportunities which might occur for enforcing their dominion with the pretence of divine authority (3).

Rome, in difficult cases of faith or discipline, had been common in early ages, and were even made by provincial and national councils. But these were also made to other bishops, eminent for personal merit, or the dignity of their sees. The popes endeavoured to claim this as a matter of right. Innocent I. asserts (A. D. 402.) that he was to be consulted, quoties fidei ratio ventilatur; and Gelasius (A. D. 492.) quantùm ad religionem pertinet, non nisi apostolicæ sedi, juxta canones, debetur summa judicii totius. As the oak is in the acorn, so did these maxims contain the system of Bellarmine. De Marca, l. i. c. 10.; and l. vii. c. 12. Dupin.

(1) Some bishops belonging to the province of Hilary, metropolitan of Aries, appealed from his sentence to Leo, who not only entertained their appeal, but presumed to depose Hilary. This assumption of power would have had little effect, if it had not been seconded by the emperor in very unguarded language: Hoc perenni sanctione decernimus, ne quid tam episcopis Gallicanis, quàm aliarum provinciarum, contra consuetudinem veterem liceat sine auctoritate viri venerabilis papæ urbis æternæ tentare; sed illis omnibusque pro lege sit, quidquid sanxit vel sanxerit apostolicæ sedis auctoritas. De Marca, De Concordantiâ Sacerdotii et Imperii, l. i. c. 8. The same emperor enacted, that any bishop who refused to attend the tribunal of the pope when summoned, should be compelled by the governor of his province: Ut quisquis episcoporum ad judicium Romani episcopi evocatus venire neglexerit, per moderatorem ejusdem provinciæ adesse cogatur. Id. l. vii. c. 13. Dupin, De Ant. Discipl. p. 29 et 171.

(2) The flattering style in which this pontiff addressed Brunehaut and Phocas, the most flagitious monsters of his time, is mentioned in all civil and ecclesiastical histories. Fleury quotes a remarkable letter to the patriarchs of Antioch and Alexandria, wherein he says that St. Peter has one see, divided into three, Rome, Antioch, and Alexandria; stooping to this absurdity, and inconsistence with his real system, in order to conciliate their alliance against his more immediate rival, the patriarch of Constantinople. Hist. Ecclés. t. viii. p. 124.

(3) Gregory seems to have established the appellant jurisdiction of the see of Rome, which had been long in suspense. Stephen, a Spanish bishop,

It cannot, I think, be said, that any material acquisitions of ecclesiastical power were obtained by the successors of Gregory for nearly one hundred and fifty years (1). As none of them possessed vigour and reputation equal to his own, it might even appear that the papal influence was retrograde. But in effect the principles which supported it were taking deeper root, and acquiring strength by occasional, though not very frequent exercise. Appeals to the pope were sometimes made by prelates dissatisfied with a local sentence; but his judgment of reversal was not always executed, as we perceive by the instance of Bishop Wilfrid (2). National councils were still convoked by princes, and canons enacted under their authority by the bishops who attended. Though the church of Lombardy was under great subjection during this period, yet those of France, and even of England, planted as the latter had been by Gregory, continued to preserve a tolerable measure of independence (3). The first striking infringement of this was made through the influence of an Englishman, Winfrid, better known

having been deposed, appealed to Rome. Gregory sent a legate to Spain, with full powers to confirm or rescind the sentence. He says in his letter on this occasion: A sede apostolicâ, quæ omnium ecclesiarum caput est, causa hæc audienda ac dirimenda fuerat. De Marca, l. vii. c. 18. In writing to the bishops of France, he enjoins them to obey Virgilius, bishop of Arles, whom he has appointed his legate in France, secundùm antiquam consuetudinem; so that if any contention should arise in the church, he may appease it by his authority, as vicegerent of the apostolic see: auctoritatis suæ vigore, vicibus nempè apostolicæ sedis functus, discretâ moderatione compescat. Gregorii Opera, t. ii. p. 783. (edit. Benedict.) Dupin, p. 34. Pasquier, Recherches de la France, l. iii. c. 9.

(1) I observe that some modern publications annex considerable importance to a supposed concession of the title of Universal Bishop, made by the emperor Phocas in 606 to Boniface III., and even appear to date the papal supremacy from this epoch. Those who have imbibed this notion may probably have been misled by a loose expression in Mosheim's Ecclesiastical History, vol. ii. p. 169.; though the general tenor of that passage by no means gives countenance to their opinion. But there are several strong objections to our considering this as a leading fact, much less as marking an æra in the history of the papacy. 1. Its truth, as commonly stated, appears more than questionable. The Roman pontiffs, Gregory I. and Boniface III., had been vehemently opposing the assumption of this title by the patriarch of Constantinople, not as due to themselves, but as one to which no bishop could legitimately pretend. There would be something almost ridiculous in the emperor's immediately conferring an appellation on themselves, which they had just disclaimed; and though this objection would not stand against evidence, yet when we find no better authority quoted for the fact than Baronius, who is no authority at all, it retains considerable weight. And indeed the want of early testimony is so decisive an objection to any alleged historical fact, that but for the strange prepossessions of some men, one might rest the case here. Fleury takes no notice of this part of the story, though he tells us that Phocas compelled the Patriarch of Constantinople to resign his title. 2. But if the strongest proof could be advanced for the authenticity of this circumstance, we might well deny its importance. The concession of Phocas could have been of no validity in Lombardy, France, and other western countries, where nevertheless the papal supremacy was incomparably more established than in the East. 3. Even within the empire, it could have had no efficacy after the violent death of that usurper, which followed soon afterwards. 4. The title of Universal Bishop is not very intelligible; but whatever it meant, the patriarch of Constantinople had borne it before, and continued to bear it ever afterwards. (Dupin, De antiquâ Disciplinâ, p. 329.) 5. The preceding popes, Pelagius II. and Gregory I., had constantly disclaimed the appellation, though it had been adopted by some towards Leo the Great in the council of Chalcedon; (Fleury, t. viii. p. 95.) nor does it appear to have been retained by the successors of Boniface, at least for some centuries. It is even laid down in the decretum of Gratian, that the pope is not styled universal: Nec etiam Romanus pontifex universalis appellatur: (p. 303. edit. 1591.) though some refer its assumption to the ninth century. Nouveau Traité de Diplomatique, t. v. p. 93. In fact it has never been an usual title. 6. The popes had unquestionably exercised a species of supremacy for more than two centuries before this time, which had lately reached a high point of authority under Gregory I. The rescript of Valentinian III., in 455, quoted in a former note, would certainly be more to the purpose than the letter of Phocas. 7. Lastly, there are no sensible marks of this supremacy making a more rapid progress for a century and a half after the pretended grant of that emperor.

(2) I refer to the English historians for the history of Wilfrid, which neither altogether supports, nor much impeaches, the independency of our Anglo-Saxon church in 700; a matter hardly worth so much contention as Usher and Stillingfleet seem to have thought. The consecration of Theodore by Pope Vitalian in 668 is a stronger fact, and cannot be got over by those injudicious protestants who take the bull by the horns.

(3) Schmidt, t. i. p. 386. 394.

St. Boniface. as St. Boniface, the apostle of Germany. Having undertaken the conversion of Thuringia, and other still heathen countries, he applied to the pope for a commission, and was consecrated bishop without any determinate see. Upon this occasion he took an oath of obedience, and became ever afterwards a zealous upholder of the apostolical chair. His success in the conversion of Germany was great, his reputation eminent, which enabled him to effect a material revolution in ecclesiastical government. Pelagius II. had, about 580, sent a pallium, or vest peculiar to metropolitans, to the bishop of Arles, perpetual vicar of the Roman see in Gaul (1). Gregory I. had made a similar present to other metropolitans. But it was never supposed that they were obliged to wait for this favour before they received consecration, until a synod of the French and German bishops, held at Frankfort in 743 by Boniface, as legate of Pope Zachary. It was here enacted, that, as a token of their willing subjection to the see of Rome, all metropolitans should request the pallium at the hands of the pope, and obey his lawful commands (2). This was construed by the popes to mean a promise of obedience before receiving the pall, which was changed in aftertimes by Gregory VII. into an oath of fealty (3).

Synod of Frankfort.

This council of Frankfort claims a leading place as an epoch in the history of the papacy. Several events ensued, chiefly of a political nature, which rapidly elevated that usurpation almost to its greatest height. Subjects of the throne of Constantinople, the popes had not as yet interfered, unless by mere admonition, with the temporal magistrate. The first instance, wherein the civil duties of a nation and the rights of a crown appear to have been submitted to his decision, was in that famous reference as to the deposition of Childeric. It is impossible to consider this in any other light than as a point of casuistry laid before the first religious judge in the church. Certainly the Franks who raised the king of their choice upon their shields never dreamed that a foreign priest had conferred upon him the right of governing. Yet it was easy

(1) Ut ad instar suum, in Galliarum partibus primi sacerdotis locum obtineat, et quidquid ad gubernationem vel dispensationem ecclesiastici statûs gerendum est, servatis patrum regulis, et sedis apostolicæ constitutis, faciat. Præterea, pallium illi concedit, etc. Dupin, p. 34. Gregory I. confirmed this vicariate to Virgilius, bishop of Arles, and gave him the power of convoking synods. De Marca, l. vi. c. 7.

(2) Decrevimus, says Boniface, in nostro synodali conventu, et confessi sumus fidem catholicam, et unitatem et subjectionem Romanæ ecclesiæ fine tenus servare, S. Petro et vicario ejus velle subjici, metropolitanos pallia ab illâ sede quærere, et, per omnia, præcepta S. Petri canonicè sequi. De Marca, l. vi. c. 7. Schmidt, t. i. p. 424. 438. 446. This writer justly remarks the obligation which Rome had to St. Boniface, who anticipated the system of Isidore. We have a letter from him to the English clergy, with a copy of canons passed in one of his synods, for the exaltation of the apostolic see; but the church of England was not then inclined to acknowledge so great a supremacy in Rome. Collier's Eccles. History, p. 128.

In the eighth general council, that of Constantinople in 872, this prerogative of sending the pallium to metropolitans was not only confirmed to the pope, but extended to the other patriarchs, who had every disposition to become as great usurpers as their more fortunate elder brother.

(3) De Marca, ubi supra, Schmidt, t. ii. p. 262. According to the latter, this oath of fidelity was exacted in the ninth century; which is very probable, since Gregory VII. himself did but fill up the sketch which Nicholas I. and John VIII. had delineated. I have since found this confirmed by Gratian, p. 305.

for succeeding advocates of Rome to construe this transaction very favourably for its usurpation over the thrones of the earth (1).

I shall but just glance at the subsequent political revolutions of that period; the invasion of Italy by Pepin, his donation of the exarchate to the Holy See, the conquest of Lombardy by Charlemagne, the patriarchate of Rome conferred upon both these princes, and the revival of the Western Empire in the person of the latter. These events had a natural tendency to exalt the papal supremacy, which it is needless to indicate. But a circumstance of a very different nature contributed to this in a still greater degree. About the conclusion of the eighth century, there appeared, under the name of one Isidore, an unknown person, a collection of ecclesiastical canons, now commonly denominated the False Decretals (2). These purported to be rescripts or decrees of the early bishops of Rome; and their effect was to diminish the authority of metropolitans over their suffragans, by establishing an appellant jurisdiction of the Roman See in all causes, and by forbidding national councils to be holden without its consent. Every bishop, according to the decretals of Isidore, was amenable only to the immediate tribunal of the pope; by which one of the most ancient rights of the provincial synod was abrogated. Every accused person might not only appeal from an inferior sentence, but remove an unfinished process before the supreme pontiff. And the latter, instead of directing a revision of the proceedings by the original judges, might annul them by his own authority; a strain of jurisdiction beyond the canons of Sardica, but certainly warranted by the more recent practice of Rome. New sees were not to be erected, nor bishops translated from one see to another, nor their resignations accepted, without the sanction of the pope. They were still indeed to be consecrated by the metropolitan, but in the pope's name. It has been plausibly suspected that these decretals were forged by some bishop, in jealousy or resentment; and their general reception may at least be partly ascribed to such sentiments. The archbishops were exceedingly powerful, and might often abuse their superiority over inferior prelates; but the whole episcopal aristocracy had abundant reason to lament their acquiescence in a system of which the metropolitans were but the earliest victims. Upon these spurious decretals was built the great

False Decretals.

(1) Eginhard says, that Pepin was made king per *auctoritatem* Romani pontificis; an ambiguous word, which may rise to *command*, or sink to *advice*, according to the disposition of the interpreter.

(2) The æra of the False Decretals has not been precisely fixed; they have seldom been supposed, however, to have appeared much before 800. But there is a genuine collection of canons published by Adrian I. in 785, which contain nearly the same principles, and many of which are copied by Isidore, as well as Charlemagne in his Capitularies. De Marca, l. vii. c. 20. Giannone, l. v. c. 6. Dupin, De antiquâ Disciplinâ, p. 133. Fleury, Hist. Eccliés. t. ix. p. 300., seems to consider the decretals as older than this collection of Adrian; but I have not observed the same opinion in any other writer. The right of appeal from a sentence of the metropolitan deposing a bishop to the Holy See is positively recognized in the Capitularies of Louis the Debonair; (Baluze, p. 1000.) the three last books of which, according to the collection of Ansegisus, are said to be apostolicâ auctoritate roborata, quia his cudendis maximè apostolica interfuit legatio. p. 1132.

fabric of papal supremacy over the different national churches; a fabric which has stood after its foundation crumbled beneath it; for no one has pretended to deny, for the last two centuries, that the imposture is too palpable for any but the most ignorant ages to credit (1).

Papal encroachments on the hierarchy.

The Gallican church made for some time a spirited though unavailing struggle against this rising despotism. Gregory IV., having come into France to abet the children of Louis the Debonair in their rebellion, and threatened to excommunicate the bishops who adhered to the emperor, was repelled with indignation by those prelates. "If he comes here to excommunicate," said they, "he shall depart hence excommunicated (2)." In the subsequent reign of Charles the Bald, a bold defender of ecclesiastical independence was found in Hincmar, archbishop of Rheims, the most distinguished statesman of his age. Appeals to the pope even by ordinary clerks had become common, and the provincial councils, hitherto the supreme spiritual tribunal, as well as legislature, were falling rapidly into decay. The frame of church government, which had lasted from the third or fourth century, was nearly dissolved; a refractory bishop was sure to invoke the supreme court of appeal, and generally met there with a more favourable judicature. Hincmar, a man equal in ambition, and almost in public estimation, to any pontiff, sometimes came off successfully in his contentions with Rome (3). But time is fatal to the unanimity of coalitions; the French bishops were accessible to superstitious prejudice, to corrupt influence, to mutual jealousy. Above all, they were conscious, that a persuasion of the pope's omnipotence had taken hold of the laity. Though they complained loudly, and invoked, like patriots of a dying state, names and principles of a freedom that was no more, they submitted almost in every instance to the continual usurpations of the Holy See. One of those, which most annoyed their aristocracy, was the concession to monasteries of exemption from episcopal authority. These had been very uncommon till about the eighth century, after which they were studiously multiplied (4). It was naturally a favourite

(1) I have not seen any account of the decretals so clear and judicious as in Schmidt's History of Germany, t. ii. p. 249. Indeed all the ecclesiastical part of that work is executed in a very superior manner. See also De Marca, l. iii. c. 5.; l. vii. c. 20. The latter writer, from whom I have derived much information, is by no means a strenuous adversary of ultra-montane pretensions. In fact, it was his object to please both in France and at Rome, to become both an archbishop and a cardinal. He failed nevertheless of the latter hope; it being impossible at that time (1650) to satisfy the papal court, without sacrificing altogether the Gallican church and the crown.

(2) De Marca, l. iv. c. 11. Velly, etc.

(3) De Marca, l. iv. c. 68. etc.; l. vi. c. 14. 28.; l. vii. c. 21. Dupin, p. 133. etc. Hist. du Droit Ecclés. Français, p. 188. 224. Velly, etc. Hincmar however was not consistent; for having obtained the see of Rheims in an equivocal manner, he had applied for confirmation at Rome, and in other respects impaired the Gallican rights. Pasquier, Recherches de la France, l. iii. c. 12.

(4) The earliest instance of a papal exemption is in 455, which indeed is a respectable antiquity. Others scarcely occur till the pontificate of Zachary, in the middle of the eighth century, who granted an exemption to Monte Casino, ita ut nullius juri subjaceat, nisi solius Romani pontificis. See this discussed in Giannone, l. v. c. 6. Precedents for the exemption of monasteries from episcopal jurisdiction occur in Marculfus's forms, compiled towards the end of the seventh century; but these were by royal authority. The kings of France were supreme heads of their national church. Schmidt, t. i. p. 382. De Marca, l. iii.

object with the abbots; and sovereigns, in those ages of blind veneration for monastic establishments, were pleased to see their own foundations rendered, as it would seem, more respectable by privileges of independence. The popes had a closer interest in granting exemptions, which attached to them the regular clergy, and lowered the dignity of the bishops. In the eleventh and twelfth centuries, whole orders of monks were declared exempt at a single stroke; and the abuse began to awaken loud complaints, though it did not fail to be aggravated afterwards.

and upon civil governments. Lothaire.

The principles of ecclesiastical supremacy were readily applied by the popes to support still more insolent usurpations. Chiefs by divine commission of the whole church, every earthly sovereign must be subject to their interference. The bishops indeed had, with the common weapons of their order, kept their own sovereigns in check; and it could not seem any extraordinary stretch in their supreme head to assert an equal prerogative. Gregory IV., as I have mentioned, became a party in the revolt against Louis I.; but he never carried his threats of excommunication into effect. The first instance where the Roman pontiffs actually tried the force of their arms against a sovereign, was the excommunication of Lothaire, king of Lorraine, and grandson of Louis the Debonair. This prince had repudiated his wife, upon unjust pretexts, but with the approbation of a national council, and had subsequently married his concubine. Nicholas I., the actual pope, dispatched two legates to investigate this business, and decide according to the canons. They hold a council at Metz, and confirm the divorce and marriage. Enraged at this conduct of his ambassadors, the pope summons a council at Rome, annuls the sentence, deposes the archbishops of Treves and Cologne and directs the king to discard his mistress. After some shuffling on the part of Lothaire, he is excommunicated; and, in a short time, we find both the king and his prelates, who had begun with expressions of passionate contempt towards the pope, suing humbly for absolution at the feet of Adrian II., successor of Nicholas, which was not granted without difficulty. In all its most impudent pretensions, the Holy See has attended to the circumstances of the time. Lothaire had powerful neighbours, the kings of France and Germany, eager to invade his dominions on the first intimation from Rome; while the real scandalousness of his behaviour must have intimidated his conscience, and disgusted his subjects.

c. 16. Fleury, Institutions au Droit, t. I. p. 228. Muratori, Dissert. 70. (t. iii. p. 404. Italian) is of opinion that exemptions of monasteries from episcopal visitation did not become frequent in Italy till the eleventh century; and that many charters of this kind are forgeries. It is held also by some English antiquaries, that no Anglo-Saxon monastery was exempt, and that the first instance is that of Battle Abbey under the Conqueror; the charters of an earlier date having been forged. Hody on Convocations, p. 20. and 170. It is remarkable that this grant is made by William, and confirmed by Lanfranc. Collier, p. 256. Exemptions became very usual in England afterwards. Henry, vol. v. p. 337.

Excommunication.

Excommunication, whatever opinions may be entertained as to its religious efficacy, was originally nothing more in appearance than the exercise of a right which every society claims, the expulsion of refractory members from its body. No direct temporal disadvantages attended this penalty for several ages; but as it was the most severe of spiritual censures, and tended to exclude the object of it not only from a participation in religious rites, but, in a considerable degree, from the intercourse of Christian society, it was used sparingly, and upon the gravest occasions. Gradually, as the church became more powerful and more imperious, excommunications were issued upon every provocation, rather as a weapon of ecclesiastical warfare, than with any regard to its original intention. There was certainly some pretext for many of these censures, as the only means of defence within the reach of the clergy, when their possessions were lawlessly violated (1). Others were founded upon the necessity of enforcing their contentious jurisdiction, which, while it was rapidly extending itself over almost all persons and causes, had not acquired any proper coercive process. The spiritual courts in England, whose jurisdiction is so multifarious, and, in general, so little of a religious nature, had till lately no means even of compelling an appearance, much less of enforcing a sentence, but by excommunication (2). Princes, who felt the inadequacy of their own laws to secure obedience, called in the assistance of more formidable sanctions. Several capitularies of Charlemagne denounce the penalty of excommunication against incendiaries, or deserters from the army. Charles the Bald procured similar censures against his revolted vassals. Thus the boundary between temporal and spiritual offences grew every day less distinct; and the clergy were encouraged to fresh encroachments, as they discovered the secret of rendering them successful (3).

The civil magistrate ought undoubtedly to protect the just rights and lawful jurisdiction of the church. It is not so evident that he should attach temporal penalties to her censures. Excommunication has never carried such a presumption of moral turpitude, as to disable a man, upon any solid principles, from the usual privileges of society. Superstition and tyranny however decided otherwise. The support due to church censures by temporal judges is vaguely declared in the capitularies of Charlemagne. It became, in later ages, a more established principle in France and England, and, I presume, in other countries. By our common law, an excommunicated person is incapable of being a witness, or of bringing an action; and he may be detained in prison until he obtains absolution. By the estab-

(1) Schmidt, t. iv. p. 217. Fleury, Institutions au Droit, t. ii. p. 192.

(2) By a recent statute, 53. G. III. c. 127., the writ De excommunicato capiendo, as a process in contempt, was abolished in England, but retained in Ireland.

(3) Mémoire de l'Acad. des Inscript. t. xxxix. p. 806, etc.

lishments of St. Louis, his estate, or person might be attached by the magistrate (1). These actual penalties were attended by marks of abhorrence and ignominy still more calculated to make an impression on ordinary minds. They were to be shunned, like men infected with leprosy, by their servants, their friends, and their families. Two attendants only, if we may trust a current history, remained with Robert, king of France, who, on account of an irregular marriage, was put to this ban by Gregory V.; and these threw all the meats which had passed his table into the fire (2). Indeed the mere intercourse with a proscribed person incurred what was called the lesser excommunication, or privation of the sacraments, and required penitence and absolution. In some places, a bier was set before the door of an excommunicated individual, and stones thrown at his windows; a singular method of compelling his submission (3). Every where, the excommunicated were debarred of a regular sepulture, which, though obviously a matter of police, has, through the superstition of consecrating burial-grounds been treated as belonging to ecclesiastical controul. Their carcasses were supposed to be incapable of corruption, which seems to have been thought a privilege unfit for those who had died in so irregular a manner (4).

Interdicts.

But as excommunication, which attacked only one and perhaps a hardened sinner, was not always efficacious, the church had recourse to a more comprehensive punishment. For the offence of a nobleman, she put a county, for that of a prince, his entire kingdom, under an interdict, or suspension of religious offices. No stretch of her tyranny was perhaps so outrageous as this. During an interdict, the churches were closed, the bells silent, the dead unburied, no rite but those of baptism and extreme unction performed. The penalty fell upon those who had neither partaken nor could have prevented the offence; and the offence was often but a private dispute, in which the pride of a pope or bishop had been wounded. Interdicts were so rare before the time of Gregory VII., that some have referred them to him as their author; instances may however be found of an earlier date, and especially that which accompanied the above-mentioned excommunication of Robert, king of France. They were afterwards issued not unfrequently against kingdoms; but in particular districts they continually occurred (5).

This was the main spring of the machinery that the clergy set in

(1) Ordonnances des Rois, t. i. p. 121. But an excommunicated person might sue in the lay, though not in the spiritual, court. No law seems to have been so severe in this respect as that of England; though it is not strictly accurate to say with Dr. Consens, (Gibson's Codex, p. 1102.) that the writ De excommun. capiendo is a privilege peculiar to the English church.

(2) Velly, t. ii.

(3) Valssette, Hist de Languedoc, t. iii. Appendix, p. 350. Du Cange, v. Excommunicatio.

(4) Du Cange, v. Imblocatus: where several authors are referred to, for the constant opinion among the members of the Greek church, that the bodies of excommunicated persons remain in statu quo.

(5) Giannone, l. vii. c. 1. Schmidt, t. iv. p. 220. Dupin, De antiquâ Ecclesiæ Disciplinâ, p. 268. St. Marc, t. ii. p. 535. Fleury, Institutions, t. ii. p. 200.

motion, the lever by which they moved the world. From the moment that these interdicts and excommunications had been tried, the powers of the earth might be said to have existed only by sufferance. Nor was the validity of such denunciations supposed to depend upon their justice. The imposer indeed of an unjust excommunication was guilty of a sin; but the party subjected to it had no remedy but submission. He who disregards such a sentence, says Beaumanoir, renders his good cause bad (1). And indeed, without annexing so much importance to the direct consequences of an ungrounded censure, it is evident that the received theory of religion concerning the indispensable obligation and mysterious efficacy of the rites of communion and confession must have induced scrupulous minds to make any temporal sacrifice rather than incur their privation. One is rather surprised at the instances of failure, than of success in the employment of these spiritual weapons against sovereigns, or the laity in general. It was perhaps a fortunate circumstance for Europe, that they were not introduced, upon a large scale, during the darkest ages of superstition. In the eighth or ninth centuries, they would probably have met with a more implicit obedience. But after Gregory VII., as the spirit of ecclesiastical usurpation became more violent, there grew up by slow degrees an opposite feeling in the laity, which ripened into an alienation of sentiment from the church, and a conviction of that sacred truth, which superstition and sophistry have endeavoured to eradicate from the heart of man, that no tyrannical government can be founded on a divine commission.

Further usurpation of the popes.

Excommunications had very seldom, if ever, been levelled at the head of a sovereign, before the instance of Lothaire. His ignominious submission, and the general feebleness of the Carlovingian line, produced a repetition of the menace at least, and in cases more evidently beyond the cognizance of a spiritual authority. Upon the death of this Lothaire, his uncle Charles the Bald, having possessed himself of Lorraine, to which the emperor Louis II. had juster pretensions, the pope Adrian II. warned him to desist, declaring that any attempt upon that country would bring down the penalty of excommunication. Sustained by the intrepidity of Hincmar, the king did not exhibit his usual pusillanimity, and the pope in this instance failed of success (2). But John VIII., the next occupier of the chair of St. Peter, carried his pretensions to a height which none of his predecessors had reached. The Carlovingian princes had formed an alliance against Boson, the usurper of the kingdom of Arles. The pope writes to Charles the Fat: "I have adopted the illustrious prince Boson as my son; be content therefore with your own kingdom; for I shall instantly excommunicate all who attempt to injure my son (3)." In another letter to the same king, who had taken some property from a convent, he

(1) P. 261.
(2) De Marca, l. iv. c. 11.
(3) Schmidt, t. ii. p. 260.

enjoins him to restore it within sixty days, and to certify by an envoy that he had obeyed the command; else an excommunication would immediately ensue, to be followed by still severer castigation, if the king should not repent upon the first punishment (1). These expressions seem to intimate a sentence of deposition from his throne, and thus anticipate by two hundred years the famous æra of Gregory VII. at which we shall soon arrive. In some respects, John VIII. even advanced pretensions beyond those of Gregory. He asserts very plainly a right of chusing the emperor, and may seem indirectly to have exercised it in the election of Charles the Bald, who had not primogeniture in his favour (2). This prince, whose restless ambition was united with meanness as well as insincerity, consented to sign a capitulation on his coronation at Rome, in favour of the pope and church, a precedent which was improved upon in subsequent ages (3). Rome was now prepared to rivet her fetters upon sovereigns, and at no period have the condition of society and the circumstances of civil government been so favourable for her ambition. But the consummation was still suspended, and even her progress arrested, for more than a hundred and fifty years. This dreary interval is filled up, in the annals of the papacy, by a series of revolutions and crimes. Six popes were deposed, two murdered, one mutilated. Frequently two or even three competitors, among whom it is not always possible by any genuine criticism to distinguish the true shepherd, drove each other alternately from the city. A few respectable names appear thinly scattered through this darkness; and sometimes, perhaps, a pope who had acquired estimation by his private virtues may be distinguished by some encroachment on the rights of princes, or the privileges of national churches. But in general the pontiffs of that age had neither leisure nor capacity to perfect the great system of temporal supremacy, and looked rather to a vile profit from the sale of episcopal confirmations, or of exemptions to monasteries (4).

Their degeneracy in the tenth century.

The corruption of the head extended naturally to all other members of the church. All writers concur in stigmatizing the dissoluteness and neglect of decency that prevailed among the clergy. Though several codes of ecclesiastical discipline had been compiled by particular prelates, yet neither these nor the ancient canons were much regarded. The bishops, indeed, who were to enforce them, had most occasion to dread their severity. They were obtruded upon their sees, as the supreme pontiffs were upon that of Rome, by force or corruption. A child of five years old was made archbishop of Rheims. The see of Narbonne was purchased for another at the age of ten (5). By this relaxation of

Corruption of morals.

(1) Durioribus deinceps sciens te verberibus erudiendum. Schmidt, p. 261.

(2) Baluz. Capitularia, t. ii. p. 251. Schmidt, t. ii. p. 197.

(3) Id. p. 199.

(4) Schmidt, t. ii. p. 414. Mosheim. St. Marc. Muratori, Ann. d'Italia, passim.

(5) Vaissette, Hist. de Languedoc, t. ii. p. 253. It

morals the priesthood began to lose its hold upon the prejudices of mankind. These are nourished chiefly indeed by shining examples of piety and virtue, but also, in a superstitious age, by ascetic observances, by the fasting and watching of monks and hermits; who have obviously so bad a lot in this life, that men are induced to conclude, that they must have secured a better reversion in futurity. The regular clergy accordingly, or monastic orders, who practised, at least apparently, the specious impostures of self-mortification, retained at all times a far greater portion of respect than ordinary priests, though degenerated themselves, as was admitted, from their primitive strictness.

Neglect of rules of celibacy.

Two crimes, or at least violations of ecclesiastical law, had become almost universal in the eleventh century, and excited general indignation; the marriage or concubinage of priests, and the sale of benefices. By an effect of those prejudices in favour of austerity to which I have just alluded, celibacy had been, from very early times, enjoined as an obligation upon the clergy. Some of the fathers permitted those already married for the first time, and to a virgin, to retain their wives after ordination, as a kind of indulgence of which it was more laudable not to take advantage; and this, after prevailing for a length of time in the Greek church, was sanctioned by the council of Trullo in 691 (1), and has ever since continued one of the distinguishing features of its discipline. The Latin church, however, did not receive these canons; and has uniformly persevered in excluding the three orders of priests, deacons, and subdeacons, not only from contracting matrimony, but from cohabiting with wives espoused before their ordination. The prohibition however, during some ages, existed only in the letter of her canons (2). In every country, the secular or parochial clergy kept women in their houses, upon more or less acknowledged terms of intercourse by a connivance of their ecclesiastical superiors, which almost amounted to a positive toleration. The sons of priests were capable of inheriting by the law of France and also of Castille (3). Some vigorous efforts had been made in England by Dunstan with the assistance of King Edgar to dispossess the married canons, if not the parochial clergy, of their benefices; but the abuse, if such it is to be considered, made incessant progress, till the middle of the ele-

was almost general in the church to have bishops under twenty years old. Id p. 149. Even the pope Benedict IX. is said to have been only twelve, but this has been doubted.

(1) This council was held at Constantinople in the dome of the palace, called Trullus by the Latins. The word Trullo, though solœcistical, is used, I believe, by ecclesiastical writers in English. St. Marc. t. i. p. 294. Art de vérifier les Dates, t. i. p. 187. Fleury, Hist. Ecclés. t. ix. p. 110. Bishops are not within this permission, and cannot retain their wives by the discipline of the Greek church.

(2) This prohibition is sometimes repeated in Charlemagne's capitularies; but I have not observed that he notices its violation as a notorious abuse. It is probable, therefore, that the open concubinage or marriage of the clergy was not general until a later period. And Fleury declares, that he has found no instance of it before 893, in the case of a parish priest at Chalons, who gave great scandal by publicly marrying. Hist. Ecclés. t. xi. p. 594.

(3) Recueil des Historiens, t. xi. préface. Marina, Ensayo sobre las Siete Partidas, c. 221. 223. This was by virtue of the general indulgence shown by the customs of that country to concubinage, or *barraganía*; the children of such an union always inheriting in default of those born in solemn wedlock. Ibid.

venth century. There was certainly much reason for the rulers of the church to restore this part of their discipline, since it is by cutting off her members from the charities of domestic life, that she secures their entire affection to her cause, and renders them, like veteran soldiers, independent of every feeling but that of fidelity to their commander, and regard to the interests of their body. Leo IX. accordingly, one of the first pontiffs who retrieved the honour of the apostolic chair, after its long period of ignominy, began in good earnest the difficult work of enforcing celibacy among the clergy (1). His successors never lost sight of this essential point of discipline. It was a struggle against the natural rights and strongest affections of mankind, which lasted for several ages, and succeeded only by the toleration of greater evils than those it was intended to remove. The laity, in general, took part against the married priests, who were reduced to infamy and want, or obliged to renounce their dearest connexions. In many parts of Germany, no ministers were left to perform divine services (2). But perhaps there was no country where the rules of celibacy met with so little attention as in England. It was acknowledged in the reign of Henry I. that the greater and better part of the clergy were married; and that prince is said to have permitted them to retain their wives (3). But the hierarchy never relaxed in their efforts; and all the councils, general or provincial, of the twelfth century, utter denunciations against *concubinary* priests (4). After that age we do not find them so frequently mentioned; and the abuse by degrees, though not suppressed, was reduced within limits at which the church might connive.

Simony.

Simony, or the corrupt purchase of spiritual benefices, was the second characteristic reproach of the clergy in the 11th century. The measures taken to repress it deserve particular consideration, as they produced effects of the highest importance in the history of the middle ages. According

(1) St. Marc, t. iii. p. 152. 164. 219. 602. etc.

(2) Schmidt, t. iii. p. 279. Martenne, Thesaurus Anecdotorum, t. i. p. 230. A Danish writer draws a still darker picture of the tyranny exercised towards the married clergy, which, if he does not exaggerate, was severe indeed: alii membris trun cabantur, alii occidebantur, alii de patriâ expellebantur, pauci sua retinuêre. Langebek, Script. Rerum Danicarum, t. i. p. 380. The prohibition was repeated by Waldemar II. in 1222, so that there seems to have been much difficulty found. Id. p. 287. and p. 272.

(3) Wilkins, Concilia, p. 387. Chronicon Saxon. Collier, p. 248. 286. 294. Lyttleton, vol. iii. p. 328. The third Lateran council fifty years afterwards speaks of the detestable custom of keeping concubines long used by the English clergy. Cùm in Angliâ pravâ et detestabili consuetudine et longo tempore fuerit obtentum, ut clerici in domibus suis fornicarias habeant. Labbé, Concilia, t. x. p. 1633. Eugenius IV. sent a legate to impose celibacy on the Irish clergy. Lyttleton's Henry II. vol. ii. p. 42.

(4) Quidam sacerdotes Latini, says Innocent III., in domibus suis habeant concubinas, et nonnulli aliquas sibi non metuunt desponsare. Opera Innocent. III. p. 558. See also p. 300. and 407. The latter cannot be supposed a very common case, after so many prohibitions; the more usual practice was to keep a female in their houses, under some pretence of relationship or servitude, as is still said to be usual in Catholic countries. Du Cange, v. Focaria. A writer of respectable authority asserts, that the clergy frequently obtained a bishop's licence to cohabit with a mate. Harmer's [Wharton's] Observations on Burnet, p. 11. I find a passage in Nicholas de Clemangis about 1400 quoted in Lewis's life of Pecock, p. 30. Plerisque in diocesibus, rectores parochiarum ex certo et conducto cum his prælatis pretio, passim et publicè concubinas tenent. This, however, does not amount to a direct licence.

The marriages of English clergy are noticed and condemned in some provincial constitutions of 1237. Matt. Paris, p. 381. And there is, even so late as 1404, a mandate by the bishop of Exeter against married priests. Wilkins, Concilia, t. iii. p. 277.

Episcopal elections.

to the primitive custom of the church, an episcopal vacancy was filled up by election of the clergy and people belonging to the city or diocese. The subject of their choice was, after the establishment of the federate or provincial system, to be approved or rejected by the metropolitan and his suffragans; and, if approved, he was consecrated by them (1). It is probable that, in almost every case, the clergy took a leading part in the election of their bishops; but the consent of the laity was absolutely necessary to render it valid (2). They were however by degrees excluded from any real participation, first in the Greek, and finally in the western church. But this was not effected till pretty late times; the people fully preserved their elective rights at Milan in the eleventh century; and traces of their concurrence may be found both in France and Germany in the next age (3).

It does not appear that the early Christian emperors interposed with the freedom of choice any farther than to make their own confirmation necessary in the great patriarchal sees, such as Rome and Constantinople, which were frequently the objects of violent competition, and to decide in controverted elections (4). The Gothic and Lombard kings of Italy followed the same line of conduct (5). But in the French monarchy a more extensive authority was assumed by the sovereign. Though the practice was subject to some variation, it may be said generally, that the Merovingian kings, the line of Charlemagne, and the German emperors of the house of Saxony, conferred bishoprics either by direct nomination, or, as was more regular, by recommendatory letters to the electors (6). In England also, before the conquest, bishops were appointed in the witenagemot; and even in the reign of William, it is said that Lanfranc was raised to the see of Canterbury by consent of parliament (1). But, independently of this prerogative, which length of time and the tacit sanction of the people have rendered unquestionably legitimate, the sovereign had other means of controuling the election of a bishop. Those estates and honours which compose the temporalities of the see, and without which the

(1) Marca, De Concordantiâ, etc. l. vi. c. 2.

(2) Father Paul on Benefices, c. 7.

(3) De Marca, ubi supra. Schmidt, t. iv. p. 173. The form of election of a bishop of Puy, in 1053, runs thus : clerus, populus, et militia elegimus. Vaissette, Hist. de Languedoc. t. ii. Appendix, p. 220. Even Gratian seems to admit in one place, that the laity had a sort of share, though no decisive voice, in filling up an episcopal vacancy. Electio clericorum est, petitio plebis. Decret. l. i. distinctio 62. And other subsequent passages confirm this.

(4) Gibbon, c. 20. St. Marc, Abrégé Chronologique, t. i. p. 7.

(5) Fra Paolo on Benefices, c. ix. Giannone, l. iii. c. 6.; l. iv. c. 12. St. Marc, t. i. p. 37.

(6) Schmidt, t. i. p. 386.; t. ii. p. 245. 487. This interference of the kings was perhaps not quite conformable to their own laws, which only reserved to them the confirmation. Episcopo decedente, says a constitution of Clotaire II. in 615, in loco ipsius, qui à metropolitano ordinari debet, à provincialibus, à clero et populo eligatur : et si persona condigna fuerit, per ordinationem principis ordinetur. Baluz. Capitul. t. i. p. 21. Charlemagne is said to have adhered to this limitation, leaving elections free, and only approving the person, and conferring investiture on him. F. Paul, on Benefices, c. xv. But a more direct influence was restored afterwards. Ivon, bishop of Chartres, about the year 1100, thus concisely expresses the several parties concurring in the creation of a bishop : eligente clero, suffragante populo, *dono* regis, per manum metropolitani, approbante Romano pontifice. Du Chesne, Script. Rerum Gallicarum, t. iv. p. 174.

(1) Lyttleton's Hist. of Henry II. vol. iv. p. 144.

naked spiritual privileges would not have tempted an avaricious generation, had chiefly been granted by former kings, and were assimilated to lands held on a beneficiary tenure. As they seemed to partake of the nature of fiefs, they required similar formalities; investiture by the lord, and an oath of fealty by the tenant. Charlemagne is said to have introduced this practice; and, by way of visible symbol, as usual in feudal institutions, to have put the ring and crosier into the hands of the newly consecrated bishop. And this continued for more than two centuries afterwards without exciting any scandal or resistance (1).

Investitures.

The church has undoubtedly surrendered part of her independence in return for ample endowments and temporal power; nor could any claim be more reasonable, than that of feudal superiors to grant the investiture of dependent fiefs. But the fairest right may be sullied by abuse; and the sovereigns, the lay patrons, the prelates of the tenth and eleventh centuries made their powers of nomination and investiture subservient to the grossest rapacity (2). According to the ancient canons, a benefice was avoided by any simoniacal payment or stipulation. If these were to be enforced, the church must almost be cleared of its ministers. Either through bribery in places where elections still prevailed, or through corrupt agreements with princes, or, at least, customary presents to their wives and ministers, a large proportion of the bishops had no valid tenure of their sees. The case was perhaps worse with inferior clerks; in the church of Milan, with was notorious for this corruption, not a single ecclesiastic could stand the test, the archbishop exacting a price for the collation of every benefice (3).

Imperial confirmation of popes.

The bishops of Rome, like those of inferior sees, were regularly elected by the citizens, laymen as well as ecclesiastics. But their consecration was deferred until the popular choice had received the sovereign's sanction. The Romans regularly dispatched letters to Constantinople or to the exarchs of Ravenna, praying that their election of a pope might be confirmed. Exceptions, if any, are infrequent while Rome was subject to the Eastern empire (4). This, among other imperial prerogatives, Charlemagne might consider as his own. He possessed the city, especially after his coronation as emperor, in full sovereignty; and even before that event, had investigated, as supreme chief, some accusations preferred against the pope Leo III. No vacancy of the papacy took place after Charlemagne became

(1) De Marca, p. 416. Giannone, l. vi. c. 7.

(2) Boniface, marquis of Tuscany, father of the countess Matilda, and by far the greatest prince in Italy, was flogged before the altar by an abbot, for selling benefices. Muratori, ad ann. 1046. The offence was much more common than the punishment, but the two combined furnish a good specimen of the eleventh century.

(3) St. Marc, t. iii. p. 65. 188. 219. 296. 230. 568. Muratori, A. D. 958. 1057. etc. Fleury, Hist. Eccliés. t. xiii. p. 73. The sum however appears to have been very small: rather like a fee than a bribe.

(4) Le Blanc, Dissertation sur l'Autorité des Empereurs. This is subjoined to his Traité des Monnaies; but not in all copies, which makes those that want it less valuable. St. Marc and Muratori, passim.

emperor; and it must be confessed, that, in the first which happened under Louis the Debonair, Stephen IV. was consecrated in haste without that prince's approbation (1). But Gregory IV., his successor, waited till his election had been confirmed; and, upon the whole, the Carlovingian emperors, though less uniformly than their predecessors, retained that mark of sovereignty (2). But during the disorderly state of Italy which followed the last reigns of Charlemagne's posterity, while the sovereignty and even the name of an emperor were in abeyance, the supreme dignity of Christendom was conferred only by the factious rabble of its capital. Otho the Great, in receiving the imperial crown, took upon him the prerogatives of Charlemagne. There is even extant a decree of Leo VIII., which grants to him and his successors the right of naming future popes. But the authenticity of this instrument is denied by the Italians (3). It does not appear that the Saxon emperors went to such a length as nomination except in one instance; (that of Gregory V. in 996;) but they sometimes, not uniformly, confirmed the election of a pope, according to ancient custom. An explicit right of nomination was however conceded to the emperor Henry III., in 1047, as the only means of rescuing the Roman church from the disgrace and depravity into which it had fallen. Henry appointed two or three very good popes; acting in this against the warnings of a selfish policy, as fatal experience soon proved to his family (4).

This high prerogative was perhaps not designed to extend beyond Henry himself. But, even if it had been transmissible to his successors, the infancy of his son Henry IV. and the factions of that minority precluded the possibility of its exercise. Nicolas II., in 1059, published a decree, which restored the right of election to the Romans; but with a remarkable variation from the original form. The cardinal bishops (seven in number, holding sees in the neighbourhood of Rome, and consequently suffragans of the pope as patriarch or metropolitan,) were to choose the supreme pontiff, with the concurrence first of the cardinal priests and deacons, (or ministers of the parish churches of Rome,) and afterwards of the laity. Thus elected, the new pope was to be presented for confirmation to Henry, "now king and hereafter to become emperor," and to such of his successors as should personally obtain that privilege (5). This decree is the foundation of that celebrated mode of election in a conclave of cardinals which has

Decree of Nicolas II.

(1) Muratori, A. D. 817. St. Marc.

(2) Le Blanc. Schmidt, t. ii. p. 186. St. Marc, t. i. p. 387. 393. etc.

(3) St. Marc had defended the authenticity of this instrument in a separate dissertation, t. iv. p. 1167.; though admitting some interpolations. Pagi, in Baronium, t. iv. p. 8., seemed to me to have urged some weighty objections; and Muratori, Annali d'Italia. A. D. 962, speaks of it as a gross imposture, in which he probably goes too far. It obtained credit rather early; and is admitted into the decretum of Gratian, notwithstanding its obvious tendency, p. 211. ed. 1591.

(4) St. Marc. Muratori. Schmidt. Struvius.

(5) St. Marc, t. iii. p. 276. The first canon of the third Lateran council makes the consent of two thirds of the college necessary for a pope's election. Labbé, Concilia. t. x. p. 1508.

ever since determined the headship of the church. It was intended not only to exclude the citizens, who had indeed justly forfeited their primitive right, but as far as possible to prepare the way for an absolute emancipation of the papacy from the imperial controul; reserving only a precarious and personal concession to the emperors, instead of their ancient legal prerogative of confirmation.

Gregory VII. 1073

The real authors of this decree, and of all other vigorous measures adopted by the popes of that age, whether for the assertion of their independence, or the restoration of discipline, was Hildebrand, archdeacon of the church of Rome, by far the most conspicuous person of the eleventh century. Acquiring by his extraordinary qualities an unbounded ascendancy over the Italian clergy, they regarded him as their chosen leader, and the hope of their common cause. He had been empowered singly to nominate a pope, on the part of the Romans, after the death of Leo IX., and compelled Henry III. to acquiesce in his choice of Victor II. (1). No man could proceed more fearlessly towards his object than Hildebrand, nor with less attention to conscientious impediments. Though the decree of Nicolas II., his own work, had expressly reserved the right of confirmation of the young king of Germany, yet on the death of that pope, Hildebrand procured the election and consecration of Alexander II. without waiting for any authority (2). During this pontificate, he was considered as something greater than the pope, who acted entirely by his counsels. On Alexander's decease, Hildebrand, long since the real head of the church, was raised with enthusiasm to its chief dignity, and assumed the name of Gregory VII.

His differences with Henr IV.

Notwithstanding the late precedent at the election of Alexander II., it appears that Gregory did not yet consider his plans sufficiently mature to throw off the yoke altogether, but declined to receive consecration until he had obtained the consent of the king of Germany (3). This moderation was not of long continuance. The situation of Germany speedily afforded him an opportunity of displaying his ambitious views. Henry IV., through a very bad education, was arbitrary and dissolute; the Saxons were engaged in a desperate rebellion; and secret disaffection had spread among the princes to an extent of which the pope was much better aware than the king (4). He began by excommunicating some of Henry's ministers on pretence of simony, and made it a ground of remonstrance, that they were not instantly dismissed. His next step was to publish a decree, or rather to renew one of Alexander II., against lay investitures (5). The abolition of these was

(1) St. Marc, p. 97.
(2) Id. p. 306.
(3) St. Marc, p. 552. He acted however as pope, corresponding in that character with bishops of all countries, from the day of his election. p. 554.
(4) Schmidt. St. Marc. These two are my principal authorities for the contest between the church and the empire.
(5) St. Marc, t. iii. p. 670.

a favourite object of Gregory, and formed an essential part of his general scheme for emancipating the spiritual, and subjugating the temporal power. The ring and crosier, it was asserted by the papal advocates, were the emblems of that power which no monarch could bestow; but even if a less offensive symbol were adopted in investitures, the dignity of the church was lowered, and her purity contaminated, when her highest ministers were compelled to solicit the patronage or the approbation of laymen. Though the estates of bishops might, strictly, be of temporal right, yet as they had been inseparably annexed to their spiritual office, it became just that what was first in dignity and importance should carry with it those accessary parts. And this was more necessary than in former times, on account of the notorious traffic which sovereigns made of their usurped nomination to benefices, so that scarcely any prelate sat by their favour whose possession was not invalidated by simony.

The contest about investitures, though begun by Gregory VII., did not occupy a very prominent place during his pontificate; its interest being suspended by other more extraordinary and important dissensions between the church and empire. The pope, after tampering some time with the disaffected party in Germany, summoned Henry to appear at Rome, and vindicate himself from the charges alleged by his subjects. Such an outrage naturally exasperated a young and passionate monarch. Assembling a number of bishops and other vassals at Worms, he procured a sentence that Gregory should no longer be obeyed as lawful pope. But the time was past for those arbitrary encroachments, or at least high prerogatives of former emperors. The relations of dependency between church and state were now about to be reversed. Gregory had no sooner received accounts of the proceedings at Worms, than he summoned a council in the Lateran palace, and by a solemn sentence, not only excommunicated Henry, but deprived him of the kingdoms of Germany and Italy, releasing his subjects from their allegiance, and forbidding them to obey him as sovereign. Thus Gregory VII. obtained the glory of leaving all his predecessors behind, and astonishing mankind by an act of audacity and ambition, which the most emulous of his successors could hardly surpass (1).

(1) The sentence of Gregory VII. against the emperor Henry was directed, we should always remember, to persons already well disposed to reject his authority. Men are glad to be told, that it is their duty to resist a sovereign against whom they are in rebellion, and will not be very scrupulous in examining conclusions which fall in with their inclinations and interests. Allegiance was in those turbulent ages easily thrown off, and the right of resistance was in continual exercise. To the Germans of the eleventh century, a prince unfit for Christian communion would easily appear unfit to reign over them; and though Henry had not given much real provocation to the pope, his vices and tyranny might seem to challenge any spiritual censure, or temporal chastisement. A nearly contemporary writer combines the two justifications of the rebellious party. Nemo Romanorum pontificem reges a regno deponere posse denegabit, quicunque decreta sanctissimi Papæ Gregorii non proscribenda judicabit. Ipse enim vir apostolicus. . . . . Præterea, liberi homines Henricum eo pacto sibi præposuerunt in regem, ut electores suos justè judicare et regali providentiâ gubernare sata-

The first impulses of Henry's mind on hearing this denunciation were indignation and resentment. But like other inexperienced and misguided sovereigns, he had formed an erroneous calculation of his own resources. A conspiracy long prepared, of which the dukes of Swabia and Carinthia were the chiefs, began to manifest itself; some were alienated by his vices, and others jealous of his family; the rebellious Saxons took courage; the bishops, intimidated by excommunications, withdrew from his side; and he suddenly found himself almost insulated in the midst of his dominions. In this desertion, he had recourse, through panic, to a miserable expedient. He crossed the Alps, with the avowed determination of submitting, and seeking absolution from the pope. Gregory was at Canossa, a fortress near Reggio, belonging to his faithful adherent, the countess Matilda. It was in a winter of unusual severity. The emperor was admitted, without his guards, into an outer court of the castle, and three 1077 successive days remained from morning till evening, in a woollen shirt and with naked feet, while Gregory, shut up with the countess, refused to admit him to his presence. On the fourth day he obtained absolution; but only upon condition of appearing on a certain day to learn the pope's decision, whether or no he should be restored to his kingdom, until which time he promised not to assume the ensigns of royalty.

This base humiliation, instead of conciliating Henry's adversaries, forfeited the attachment of his friends. In his contest with the pope, he had found a zealous support in the principal Lombard cities, among whom the married and simoniacal clergy had great influence (1). Indignant at his submission to Gregory, whom they affected to consider as an usurper of the papal chair, they now closed their gates against the emperor, and spoke openly of deposing him. In this singular position between opposite dangers, Henry retrod his late steps, and broke off his treaty with the pope; preferring, if he must fall, to fall as the defender rather than the betrayer of his imperial rights. The rebellious princes of Germany chose another king, Rodolph duke of Swabia, on whom Gregory, after some delay, bestowed the crown, with a Latin verse, importing that it was given by virtue of the original commission of St.

geret, quod pactum ille postea prævaricari et contemnere non cessavit, etc. Ergò, et absque sedis apostolicæ judicio principes eum pro rege meritò refutare possent, cùm pactum adimplere contemserit, quod iis pro electione suâ promiserat; quo non adimpleto, nec rex esse poterat. Vita Greg. VII. in Muratori, Script. Rer. Ital. t. iii. p. 342.

Upon the other hand, the friends and supporters of Henry, though ecclesiastics, protested against this novel stretch of prerogative in the Roman see. Several proofs of this are adduced by Schmidt, t. iii. p. 315.

(1) There had been a kind of civil war at Milan for about twenty years before this time, excited by the intemperate zeal of some partizans who endeavoured to execute the papal decrees against irregular clerks by force. The history of these feuds has been written by two contemporaries, Arnulf and Landulf, published in the 4th volume of Muratori's Scriptores Rerum Italicarum: sufficient extracts from which will be found in St. Marc, t. iii. p. 230. etc., and in Muratori's Annals. The Milanese clergy set up a pretence to retain wives, under the authority of their great archbishop, St. Ambrose, who, it seems, has spoken with more indulgence of this practice than most of the fathers. Both Arnulf and Landulf favour the married clerks, and were perhaps themselves of that description. Muratori.

Peter (1). But the success of this pontiff, in his immediate designs, was not answerable to his intrepidity. Henry both subdued the German rebellion, and carried on the war with so much vigour, or rather so little resistance, in Italy, that he was crowned in Rome by the antipope Guibert, whom he had raised in a council of his partizans to the government of the church instead of Gregory. The latter found an asylum under the protection of Roger Guiscard at Salerno, where he died in exile. His mantle, however, descended upon his successors, especially Urban II. and Paschal II., who strenuously persevered in the great contest for ecclesiastical independence; the former with a spirit and policy worthy of Gregory VII., the latter with steady but disinterested prejudice (2). They raised up enemies against Henry IV. out of the bosom of his family, instigating the ambition of two of his sons successively, Conrad and Henry, to mingle in the revolts of Germany. But Rome, under whose auspices the latter had not scrupled to engage in an almost parricidal rebellion, was soon disappointed by his unexpected tenaciousness of that obnoxious prerogative which had occasioned so much of his father's misery. He steadily refused to part with the right of investiture; and the empire was still committed in open hostility with the church for fifteen years of his reign. But Henry V. being stronger in the support of his German vassals than his father had been, none of the popes with whom he was engaged had the boldness to repeat the measures of Gregory VII. At length, each party grown weary of this ruinous contention, a treaty was agreed upon between the emperor and Calixtus II., which put an end by compromise to the question of ecclesiastical investitures. By this compact, the emperor resigned for ever all pretence to invest bishops by the ring and crosier, and recognized the liberty of elections. But, in return, it was agreed, that elections should be made in his presence, or that of his officers; and that the new bishop should receive his temporalities from the emperor by the sceptre (3).

Dispute about investitures.

Compromised by concordat of Calixtus. 1122

Both parties, in the concordat at Worms, receded from so much of their pretensions, that we might almost hesitate to determine which is to be considered as victorious. On the one hand, in restoring the freedom of episcopal elections, the emperors lost a prerogative of very long standing, and almost necessary to the maintenance of authority over not the least turbulent part of their

(1) Petra dedit Petro, Petrus diadema Rodolpho.

(2) Paschal II. was so conscientious in his abhorrence of investitures that he actually signed an agreement with Henry V. in 1110, whereby the prelates were to resign all the lands and other possessions which they held in fief of the emperor, on condition of the latter renouncing the right of investiture, which indeed, in such circumstances, would fall of itself. This extraordinary concession, as may be imagined, was not very satisfactory to the cardinals and bishops about Paschal's court, more worldly-minded than himself, nor to those of the emperor's party, whose joint clamours soon put a stop to the treaty. St. Marc, t. iv. p. 976. A letter of Paschal to Anselm (Schmidt, t. iii. p. 304.) seems to imply, that he thought it better for the church to be without riches, than to enjoy them on condition of doing homage to laymen.

(3) St. Marc, t. iv. p. 1093. Schmidt. t iii. p. 178. The latter quotes the Latin words.

subjects. And though the form of investiture by the ring and crosier seemed in itself of no importance, yet it had been in effect a collateral security against the election of obnoxious persons. For the emperors, detaining this necessary part of the pontificals until they should confer investiture, prevented a hasty consecration of the new bishop, after which, the vacancy being legally filled, it would not be decent for them to withhold the temporalities. But then, on the other hand, they preserved by the concordat their feudal sovereignty over the estates of the church, in defiance of the language which had recently been held by its rulers. Gregory VII. had positively declared in the Lateran council of 1080, that a bishop or abbot receiving investiture from a layman should not be reckoned as a prelate (1). The same doctrine had been maintained by all his successors, without any limitation of their censures to the formality of the ring and crosier. But Calixtus II. himself had gone much farther, and absolutely prohibited the compelling ecclesiastics to render any service to laymen on account of their benefices (2). It is evident, that such a general immunity from feudal obligations for an order who possessed nearly half the lands in Europe struck at the root of those institutions by which the fabric of society was principally held together. This complete independency had been the aim of Gregory's disciples; and by yielding to the continuance of lay investitures in any shape, Calixtus may, in this point of view, appear to have relinquished the principal object of contention. But as there have been battles, in which, though immediate success may seem pretty equally balanced, yet we learn from subsequent effects to whom the intrinsic advantages of victory belonged, so it is manifest from the events that followed the settlement of this great controversy about investitures, that the see of Rome had conquered.

The emperors were not the only sovereigns whose practice of investiture excited the hostility of Rome, although they sustained the principal brunt of the war. A similar contest broke out under the pontificate of Paschal II. with Henry I. of England; for the circumstances of which, as they contain nothing peculiar, I refer to our own historians. It is remarkable, that it ended in a compromise not unlike that adjusted at Worms; the king renouncing all sort of investitures, while the pope consented that the bishop should do homage for his temporalities. This was exactly the custom of France, where investiture by the ring and crosier is said not to have prevailed (3); and it answered the main end of sovereigns by keeping up the feudal dependency of ecclesiastical estates.

(1) St. Marc, t. iv. p. 774. A bishop of Placentia asserts that prelates dishonoured their order by putting their hands, which held the body and blood of Christ, between those of impure laymen. p. 956. The same expressions are used by others, and are levelled at the form of feudal homage, which, according to the principles of that age, ought to have been as obnoxious as investiture.

(2) Ibid. p. 1061. 1067.

(3) Histoire du Droit public ecclésiastique français, p. 261. I do not fully rely on this authority.

But the kings of Castile were more fortunate than the rest; discreetly yielding to the pride of Rome, they obtained what was essential to their own authority, and have always possessed, by the concession of Urban II., an absolute privilege of nomination to bishoprics in their dominions (1). An early evidence of that indifference of the popes towards the real independence of national churches, to which subsequent ages were to lend abundant confirmation.

Introduction of capitular elections.

When the emperors had surrendered their pretensions to interfere in episcopal elections, the primitive mode of collecting the suffrages of clergy and laity in conjunction, or at least of the clergy with the laity's assent and ratification, ought naturally to have revived. But in the twelfth century, neither the people, nor even the general body of the diocesan clergy, were considered as worthy to exercise this function. It soon devolved altogether upon the chapter of cathedral churches (2). The original of these may be traced very high. In the earliest ages, we find a college of presbytery consisting of the priests and deacons, assistants as a council of advice or even a kind of parliament to their bishops. Parochial divisions, and fixed ministers attached to them, were not established till a later period. But the canons, or cathedral clergy, acquired afterwards a more distinct character. They were subjected by degrees to certain strict observances, little differing, in fact, from those imposed on monastic orders. They lived at a common table, they slept in a common dormitory, their dress and diet were regulated by peculiar laws. But they were distinguished from monks by the right of possessing individual property, which was afterwards extended to the enjoyment of separate prebends or benefices. These strict regulations, chiefly imposed by Louis the Debonair, went into disuse through the relaxation of discipline; nor were they ever effectually restored. Meantime the chapters became extremely rich; and as they monopolized the privilege of electing bishops, it became an object of ambition with noble families to obtain canonries for their younger children, as the surest road to ecclesiastical honours and opulence. Contrary, therefore, to the general policy of the church, persons of inferior birth have been rigidly excluded from these foundations (3).

(1) F. Paul on Benefices, c. 24. Zarita, Anales de Aragon, t. iv. p. 305. Fleury says that the kings of Spain nominate to bishoprics by virtue of a particular indulgence, renewed by the pope for the life of each prince. Institutions au droit, t. i. p. 106.

(2) Fra Paolo (Treatise of Benefices, c. 24.) says that between 1122 and 1145, it became a rule almost every where established, that bishops should be chosen by the chapter. Schmidt, however, brings a few instances, where the consent of the nobility and other laics is expressed, though perhaps little else than a matter of form. Innocent II. seems to have been the first who declared, that whoever had the majority of the chapter in his favour should be deemed duly elected; and this was confirmed by Otho IV. in the capitulation upon his accession. Hist. des Allemands, t. iv. p. 175. Fleury thinks that chapters had not an exclusive election till the end of the twelfth century. The second Lateran council in 1139 represses their attempts to engross it. Institutions au Droit Eccléa. t. i. p. 100.

(3) Schmidt, t. ii. p. 224. 475.; t. iii. p. 28.

General conduct of Gregory VII.

The object of Gregory VII., in attempting to redress those more flagrant abuses which for two centuries had deformed the face of the Latin church, is not incapable, perhaps, of vindication, though no sufficient apology can be offered for the means he employed. But the disinterested love of reformation, to which candour might ascribe the contention against investitures, is belied by the general tenor of his conduct, exhibiting an arrogance without parallel, and an ambition that grasped at universal and unlimited monarchy. He may be called the common enemy of all sovereigns, whose dignity as well as independence mortified his infatuated pride. Thus we find him menacing Philip I. of France, who had connived at the pillage of some Italian merchants and pilgrims, not only with an interdict, but a sentence of deposition (1). Thus too he asserts, as a known historical fact, that the kingdom of Spain had formerly belonged, by special right, to St. Peter; and by virtue of this imprescriptible claim, he grants to a certain count de Roucy all territories which he should reconquer from the Moors, to be held in fief from the Holy See by a stipulated rent (2). A similar pretension he makes to the kingdom of Hungary, and bitterly reproaches its sovereign Solomon, who had done homage to the emperor, in derogation of St. Peter, his legitimate lord (3). It was convenient to treat this apostle as a great feudal suzerain; and the legal principles of that age were dexterously applied to rivet more forcibly the fetters of superstition (4).

While temporal sovereigns were opposing so inadequate a resistance to a system of usurpation contrary to all precedent, and to the common principles of society, it was not to be expected, that national churches should persevere in opposing pretensions, for which several ages had paved the way. Gregory VII. completed the destruction of their liberties. The principles contained in the decretals of Isidore, hostile as they were to ecclesiastical independence, were set aside as insufficient to establish the absolute monarchy of Rome. By a constitution of Alexander II., during whose pontificate Hildebrand himself was deemed the effectual

Encyclopédie, Art. Chanoine. F. Paul on Benefices, c. 13. Fleury, huitiéme Discours sur l'Hist. Ecclés.

(1) St. Marc, t. iii. p. 628. Fleury, Hist. Ecclés. t. xiii. p. 281. 284.

(2) The language he employs is worth quoting, as a specimen of his style: Non latere vos credimus, regnum Hispaniæ ab antiquo juris sancti Petri fuisse, et adhuc licet diù à paganis sit occupatum, lege tamen justitiæ non evacuatâ, nulli mortalium, sed soli apostolicæ sedi ex æquo pertinere. Quod enim auctore Deo semel in proprietates ecclesiarum justè pervenerit, manente eo, ab usu quidem, sed ab earum jure, occasione transeuntis temporis, sine legitimâ concessione divelli non poterit. Itaque Comes Evalus de Rocelo, cujus famam apud vos haud obscuram esse putamus, terram illam ad honorem Sti. Petri ingredi, et à paganorum manibus eripere cupiens, hanc concessionem ab apostolicâ sede obtinuit, ut partem illam, undè paganos suo studio et adjuncto sibi aliorum auxilio expellere possit, sub conditione inter nos factæ pactionis ex parte Sti. Petri possideret. Labbé, Concilia, t. x. p. 10. Three instances occur in the Corps Diplomatique of Dumont, where a duke of Dalmatia, (t. i. p. 53.) a count of Provence, (p. 58.) and a count of Barcelona, (ibid.) put themselves under the feudal superiority and protection of Gregory VII. The motive was sufficiently obvious.

(3) St. Marc, t. iii. p. 624. 674. Schmidt, p. 73.

(4) The character and policy of Gregory VII. are well discussed by Schmidt, t. iii. p. 307.

pope, no bishop in the catholic church was permitted to exercise his functions, until he had received the confirmation of the Holy See (1): a provision of vast importance, through which, beyond perhaps any other means, Rome has sustained, and still sustains, her temporal influence, as well as her ecclesiastical supremacy. The national churches, long abridged of their liberties by gradual encroachments, now found themselves subject to an undisguised and irresistible despotism. Instead of affording protection to bishops against their metropolitans, under an insidious pretence of which the popes of the ninth century had subverted the authority of the latter, it became the favourite policy of their successors to harass all prelates with citations to Rome (2). Gregory obliged the metropolitans to attend in person for the pallium (3). Bishops were summoned even from England and the northern kingdoms to receive the commands of the spiritual monarch. William the Conqueror having made a difficulty about permitting his prelates to obey these citations, Gregory, though in general on good terms with that prince, and treating him with a deference which marks the effect of a firm character in repressing the ebullitions of overbearing pride (4), complains of this as a persecution unheard of among pagans (5). The great quarrel between Archbishop Anselm and his two sovereigns, William Rufus and Henry I., was originally founded upon a similar refusal to permit his departure for Rome.

Authority of papal legates.

This perpetual controul exercised by the popes over ecclesiastical, and in some degree over temporal affairs, was maintained by means of their legates, at once the ambassadors and the lieutenants of the Holy See. Previously to the latter part of the tenth age, these had been sent not frequently and upon special occasions. The legatine or vicarial commission had generally been entrusted to some eminent metropolitan of the nation within which it was to be exercised; as the archbishop of Canterbury was perpetual legate in England. But the special commissioners or legates a latere, suspending the pope's ordinary vicars, took upon themselves an unbounded authority over the national churches, holding councils, promulgating canons, deposing bishops, and issuing interdicts at their discretion. They lived in splendour at the expense of the bishops of the province. This was the more galling to the hierarchy, because simple deacons were often invested with this dignity, which set them above primates. As the sovereigns of France and England acquired more courage, they considerably abridged this prerogative of the Holy See, and resisted the entrance of any legates into their dominions without their consent (6).

(1) St. Marc, p. 460.
(2) Schmidt, t. iii. p. 80. 322.
(3) Id. t. iv. p. 170.
(4) St. Marc, p. 628. 781. Schmidt, t. iii. p. 82.
(5) St. Marc, t. iv. p. 768. Collier, p. 252.
(6) De Marca, l. vi. c. 28. 30. 31. Schmidt, t. ii.

From the time of Gregory VII., no pontiff thought of awaiting the confirmation of the emperor, as in earlier ages, before he was installed in the throne of St. Peter. On the contrary, it was pretended that the emperor was himself to be confirmed by the pope. This had indeed been broached by John VIII. two hundred years before Gregory (1). It was still a doctrine not calculated for general reception; but the popes availed themselves of every opportunity which the temporizing policy, the negligence, or bigotry of sovereigns threw into their hands. Lothaire coming to receive the imperial crown at Rome, this circumstance was commemorated by a picture in the Lateran palace, in which, and in two Latin verses subscribed, he was represented as doing homage to the pope (2). When Frederic Barbarossa came upon the same occasion, he omitted to hold the stirrup of Adrian IV., who, in his turn, refused to give him the usual kiss of peace; nor was the contest ended but by the emperor's acquiescence, who was content to follow the precedents of his predecessors. The same Adrian, expostulating with Frederic upon some slight grievance, reminded him of the imperial crown which he had conferred, and declared his willingness to bestow, if possible, still greater benefits. But the phrase employed (majora beneficia) suggested the idea of a fief; and the general insolence which pervaded Adrian's letter confirming this interpretation, a ferment arose among the German princes, in a congress of whom this letter was delivered. "From whom then," one of the legates was rash enough to say, "does the emperor hold his crown, except from the pope?" which so irritated a prince of Wittelsbach, that he was with difficulty prevented from cleaving the priest's head with his sabre (3). Adrian IV. was the only Englishman that ever sat in the papal chair. It might, perhaps, pass for a favour bestowed on his natural sovereign, when he granted to Henry II. the kingdom of Ireland; yet the language of this donation, wherein he asserts all islands to be the exclusive property of St. Peter, should not have had a very pleasing sound to an insular monarch.

Adrian IV.

I shall not wait to comment on the support given to Becket by Alexander III., which must be familiar to the English reader, nor on his speedy canonization; a reward which the church has always held out to its most active friends, and which

Innocent III. 1194—1216

p. 498.; t. iii. p. 312. 320. Hist. du Droit Public Eccl. Français, p. 280. Fleury, quatrième Discours sur l'Hist. Ecclés. c. 10.

(1) Vide supra. It appears manifest, that the scheme of temporal sovereignty was only suspended by the disorders of the Roman See in the tenth century. Peter Damian, a celebrated writer of the age of Hildebrand, and his friend, puts these words into the mouth of Jesus Christ, as addressed to Pope Victor II. Ego claves totius universalis ecclesiæ meæ tuis manibus tradidi, et super eam te mihi vicarium posui, quam proprii sanguinis effusione redemi. Et si pauca sunt ista, etiam monarchias addidi: immò sublato rege de medio totius Romani imperii vacantis tibi jura permisi. Schmidt, t. iii. p. 78.

(2) Rex venit ante fores, jurans priùs urbis honores:
Post homo fit papæ, sumit quo dante coronam.
(Muratori, Annali, A. D. 1157.)

There was a pretext for this artful line. Lothaire had received the estate of Matilda in fief from the pope, with a reversion to Henry the Proud, his son-in-law. Schmidt, t. iii. p. 393.

(3) Muratori, ubi supra. Schmidt, t. iii. p. 393.

may be compared to titles of nobility granted by a temporal sovereign (1). But the epoch when the spirit of papal usurpation was most strikingly displayed was the pontificate of Innocent III. In each of the three leading objects which Rome had pursued, independent sovereignty, supremacy over the Christian church, controul over the princes of the earth, it was the fortune of this pontiff to conquer. He realized, as we have seen in another place, that fond hope of so many of his predecessors, a dominion over Rome and the central parts of Italy. During his pontificate, Constantinople was taken by the Latins; and however he might seem to regret a diversion of the crusaders, which impeded the recovery of the Holy Land, he exulted in the obedience of the new patriarch, and the reunion of the Greek church. Never, perhaps, either before or since, was the great eastern schism in so fair a way of being healed; even the kings of Bulgaria and of Armenia acknowledged the supremacy of Innocent, and permitted his interference with their ecclesiastical institutions.

His extraordinary pretensions.

The maxims of Gregory VII. were now matured by more than a hundred years, and the right of trampling upon the necks of kings had been received, at least among churchmen, as an inherent attribute of the papacy. "As the sun and the moon are placed in the firmament," (such is the language of Innocent,) "the greater as the light of the day, and the lesser of the night; thus are there two powers in the church; the pontifical, which, as having the charge of souls, is the greater; and the royal, which is the less, and to which the bodies of men only are entrusted (2)." Intoxicated with these conceptions, (if we may apply such a word to *successful* ambition,) he thought no quarrel of princes beyond the sphere of his jurisdiction. "Though I cannot judge of the right to a fief," said Innocent to the kings of France and England, "yet it is my province to judge where sin is committed, and my duty to prevent all public scandals." Philip Augustus, who had at that time the worse in his war with Richard, acquiesced in this sophism; the latter was more refractory, till the papal legate began to menace him with the rigour of the church (3). But the king of England, as well as his adversary, condescended to obtain temporary ends by an impolitic submission to Rome. We have a letter from Innocent to the king of Navarre, directing him, on pain of spiritual censures, to restore some castles which he detained from Richard (4). And

(1) The first instance of a solemn papal canonization is that of St. Udalric by John XVI., in 993. However, the metropolitans continued to meddle with this sort of apotheosis till the pontificate of Alexander III., who reserved it, as a choice prerogative, to the Holy See. Art de vérifier les Dates, t. i. p. 247. and 290.

(2) Vita Innocentii Tertii in Muratori, Scriptores Rerum Ital. t. iii. pars i. p. 488. This life is written by a contemporary. St. Marc, t. v. p. 325. Schmidt, t. iv. p. 227.

(3) Philippus rex Franciæ in manu ejus datâ fide promisit se ad mandatum ipsius pacem vel treugas cum rege Angliæ initurum. Richardus autem rex Angliæ se difficilem ostendebat. Sed cùm idem legatus ei *cœpit rigorem ecclesiasticum intentare*, saniori ductus consilio acquievit. Vita Innocentii Tertii, t. iii. pars i. p. 503.

(4) Innocentii Opera, (Coloniæ, 1574,) p. 124.

the latter appears to have entertained hopes of recovering his ransom paid to the emperor and duke of Austria, through the pope's interference (1). By such blind sacrifices of the greater to the less, of the future to the present, the sovereigns of Europe played continually into the hands of their subtle enemy.

Though I am not aware that any pope before Innocent III. had thus announced himself as the general arbiter of differences and conservator of the peace throughout Christendom, yet the scheme had been already formed, and the public mind was in some degree prepared to admit it. Gerohus, a writer who lived early in the twelfth century, published a theory of perpetual pacification, as feasible certainly as some that have been planned in later times. All disputes among princes were to be referred to the pope. If either party refused to obey the sentence of Rome, he was to be excommunicated and deposed. Every Christian sovereign was to attack the refractory delinquent, under pain of a similar forfeiture (2). A project of this nature had not only a magnificence flattering to the ambition of the church, but was calculated to impose upon benevolent minds, sickened by the cupidity and oppression of princes. No controul but that of religion appeared sufficient to restrain the abuses of society; while its salutary influence had already been displayed both in the Truce of God, which put the first check on the custom of private war, and more recently in the protection afforded to crusaders against all aggression during the continuance of their engagement. But reasonings from the excesses of liberty in favour of arbitrary government, or from the calamities of national wars in favour of universal monarchy, involve the tacit fallacy, that perfect, or at least superior, wisdom and virtue will be found in the restraining power. The experience of Europe was not such as to authorize so candid an expectation in behalf of the Roman See.

There were certainly some instances, where the temporal supremacy of Innocent III., however usurped, may appear to have been exerted beneficially. He directs one of his legates to compel the observance of peace between the kings of Castile and Portugal, if necessary, by excommunication and interdict (3). He enjoins the king of Aragon to restore his coin which he had lately debased, and of which great complaint had arisen in his kingdom (4). Nor do I question his sincerity in these, or in many other cases of interference with civil government. A great mind, such as Innocent III. undoubtedly possessed, though prone to sacrifice every other object to ambition, can never be indifferent to the beauty of social order, and the happiness of mankind. But, if we may judge

(1) Id. p. 134. Innocent actually wrote some letters for this purpose, but without any effect, nor was he probably at all solicitous about it. p. 139. and 141. Nor had he interfered to procure Richard's release from prison: though Eleanor wrote him a letter, in which she asks, "Has not God given you the power to govern nations and kings?" Velly, Hist. de France, t. iii. p. 382.

(2) Schmidt, t. iv. p. 232.

(3) Innocent. Opera, p. 146.

(4) P. 378.

by the correspondence of this remarkable person, his foremost gratification was the display of unbounded power. His letters, especially to ecclesiastics, are full of unprovoked rudeness. As impetuous as Gregory VII., he is unwilling to owe any thing to favour; he seems to anticipate denial, heats himself into anger as he proceeds, and where he commences with solicitation, seldom concludes without a menace (1). An extensive learning in ecclesiastical law, a close observation of whatever was passing in the world, an unwearied diligence, sustained his fearless ambition (1). With such a temper, and with such advantages, he was formidable beyond all his predecessors, and perhaps beyond all his successors. On every side, the thunder of Rome broke over the head of princes. A certain Sweno is excommunicated for usurping the crown of Norway. A legate, in passing through Hungary, is detained, by the king: Innocent writes in tolerably mild terms to this potentate, but fails not to intimate that he might be compelled to prevent his son's succession to the throne. The king of Leon had married his cousin, a princess of Castile. Innocent subjects the kingdom to an interdict. When the clergy of Leon petition him to remove it, because when they ceased to perform their functions, the laity paid no tithes, and listened to heretical teachers when orthodox mouths were mute, he consented that divine service with closed doors, but not the rites of burial, might be performed (3). The king at length gave way, and sent back his wife. But a more illustrious victory of the same kind was obtained over Philip Augustus, who, having repudiated Isemburga of Denmark, had contracted another marriage. The conduct of the king, though not without the usual excuse of those times, nearness of blood, was justly condemned: and Innocent did not hesitate to visit his sins upon the people by a general interdict. This, after a short demur from some bishops, was enforced throughout France; the dead lay unburied, and the living were cut off from the offices of religion, till Philip, thus subdued, took back his divorced wife. The submission of such a prince, not feebly superstitious, like his predecessor Robert, nor vexed with seditions, like the emperor Henry IV., but brave, firm, and victorious, is perhaps the proudest trophy in the scutcheon of Rome. Compared with this, the subsequent triumph of Innocent over our pusillanimous John seems cheaply gained, though the surrender of a powerful kingdom into the vassalage of the pope may

(1) Innocent. Opera, p. 31. 73. 76. etc. etc.

(2) The following instance may illustrate the character of this pope, and his spirit of governing the whole world, as much as those of a more public nature. He writes to the chapter of Pisa, that one Rubeus, a citizen of that place, had complained to him, that having mortgaged a house and garden for two hundred and fifty-two pounds, on condition that he might redeem it before a fixed day, within which time he had been unavoidably prevented from raising the money, the creditor had now refused to accept it; and directs them to inquire into the facts, and if they prove truly stated, to compel the creditor by spiritual censures to restore the premises, reckoning their rent during the time of his mortgage as part of the debt, and to receive the remainder. Id. t. i. p. 17. It must be admitted, that Innocent III. discouraged in general those vexatious and dilatory appeals from inferior ecclesiastical tribunals to the court of Rome, which had gained ground before his time, and especially in the pontificate of Alexander III.

(3) Innocent. Opera, t. ii. p. 411. Vita Innocent. III.

strike us as a proof of stupendous baseness on one side, and audacity on the other (1). Yet, under this very pontificate, it was not unparalleled. Peter II., king of Aragon, received at Rome the belt of knighthood and the royal crown from the hands of Innocent III.; he took an oath of perpetual fealty and obedience to him and his successors; he surrendered his kingdom, and accepted it again to be held by an annual tribute, in return for the protection of the Apostolic See (2). This strange conversion of kingdoms into spiritual fiefs was intended as the price of security from ambitious neighbours, and may be deemed analogous to the change of alodial into feudal, or, more strictly, to that of lay into ecclesiastical tenure, which was frequent during the turbulence of the darker ages.

I have mentioned already, that among the new pretensions advanced by the Roman See, was that of confirming the election of an emperor. It had however been asserted rather incidentally than in a peremptory manner. But the doubtful elections of Philip and Otho after the death of Henry VI. gave Innocent III. an opportunity of maintaining more positively this pretended right. In a decretal epistle addressed to the duke of Zahringen, the object of which is to direct him to transfer his allegiance from Philip to the other competitor, Innocent, after stating the mode in which a regular election ought to be made, declares the pope's immediate authority to examine, confirm, anoint, crown and consecrate the elect emperor, provided he shall be worthy; or to reject him, if rendered unfit by great crimes, such as sacrilege, heresy, perjury, or persecution of the church; in default of election, to supply the vacancy; or, in the event of equal suffrages, to bestow the empire upon any person at his discretion (3). The princes of Germany were not much influenced by this hardy assumption, which manifests the temper of Innocent III. and of his court, rather than their power. But Otho IV. at his coronation by the pope signed a capitulation, which cut off several privileges enjoyed by the emperors, even since the concordat of Calixtus, in respect of episcopal elections and investitures (4).

Papal authority in the thirteenth century.

The noon-day of papal dominion extends from the pontificate of Innocent III. inclusively to that of

(1) The stipulated annual payment of 1000 marks was seldom made by the kings of England; but one is almost ashamed that it should ever have been so. Henry III. paid it occasionally, when he had any object to attain, and even Edward I. for some years: the latest payment on record is in the seventeenth of his reign. After a long discontinuance, it was demanded in the fortieth of Edward III., (1366) but the parliament unanimously declared that John had no right to subject the kingdom to a superior without their consent; which put an end for ever to the applications. Prynne's Constitutions, vol. iii.

(2) Zurita, Anales de Aragon, t. i. f. 91. This was not forgotten towards the latter part of the same century, when Peter III. was engaged in the Sicilian war, and served as a pretence for the pope's sentence of deprivation.

(3) Decretal. l. i. tit. 6. c. 34. commonly cited Venerabilem. The rubric or synopsis of this epistle asserts the pope's right electum imperatorem examinare, approbare, et inungere, consecrare et coronare, si est dignus; vel rejicere si est indignus, ut quia sacrilegus, excommunicatus, tyrannus, fatuus et hæreticus, paganus, perjurus, vel ecclesiæ persecutor. Et electoribus nolentibus eligere, Papa supplet. Et datâ paritate vocum eligentium, nec accedente majorâ concordiâ, Papa potest gratificari cui vult. The epistle itself is, if possible, more strongly expressed.

(4) Schmidt, t. iv. p. 149. 175.

Boniface VIII.; or, in other words, through the thirteenth century. Rome inspired during this age all the terror of her ancient name. She was once more the mistress of the world, and kings were her vassals. I have already anticipated the two most conspicuous instances when her temporal ambition displayed itself, both of which are inseparable from the civil history of Italy (1). In the first of these, her long contention with the house of Swabia, she finally triumphed. After his deposition by the council of Lyons, the affairs of Frederic II. went rapidly into decay. With every allowance for the enmity of the Lombards, and the jealousies of Germany, it must be confessed, that the proscription of Innocent IV. and Alexander IV. was the main cause of the ruin of his family. There is, however, no other instance, to the best of my judgment, where the pretended right of deposing kings has been successfully exercised. Martin IV. absolved the subjects of Peter of Aragon from their allegiance, and transferred his crown to a prince of France; but they did not cease to obey their lawful sovereign. This is the second instance which the thirteenth century presents of interference on the part of the popes in a great temporal quarrel. As feudal lords of Naples and Sicily, they had indeed some pretext for engaging in the hostilities between the houses of Anjou and Aragon, as well as for their contest with Frederic II. But the pontiffs of that age, improving upon the system of Innocent III., and sanguine with past success, aspired to render every European kingdom formally dependent upon the see of Rome. Thus Boniface VIII., at the instigation of some emissaries from Scotland, claimed that monarchy as paramount lord, and interposed, though vainly, the sacred panoply of ecclesiastical rights to rescue it from the arms of Edward I. (2).

Canon law.

This general supremacy effected by the Roman church over mankind in the twelfth and thirteenth centuries, derived material support from the promulgation of the canon law. The foundation of this jurisprudence is laid in the decrees of councils, and in the rescripts or decretal epistles of popes to questions propounded upon emergent doubts relative to matters of discipline and ecclesiastical œconomy. As the jurisdiction of the spiritual tribunals increased, and extended to a variety of persons and causes, it became almost necessary to establish an uniform system for the regulation of their decisions. After several minor compilations had appeared, Gratian, an Italian monk, published, about the year 1140, his Decretum, or general collection of canons, papal epistles, and sentences of fathers, arranged and digested into titles and chapters, in imitation of the Pandects, which very little before had begun to be studied again with great diligence. This work of Gratian, though it seems rather an extraordinary performance for the age when it appeared, has been censured for notorious incorrectness as well as inconsistency, and

(1) See above, chapter iii.

(2) Dalrymple's Annals of Scotland, vol. i. p. 267.

especially for the authority given in it to the false decretals of Isidore, and consequently to the papal supremacy. It fell, however, short of what was required in the progress of that usurpation. Gregory IX. caused the five books of Decretals to be published by Raimond de Pennafort in 1234. These consist almost entirely of rescripts issued by the later popes, especially Alexander III., Innocent III., Honorius III., and Gregory himself. They form the most essential part of the canon law, the Decretum of Gratian being comparatively obsolete. In these books we find a regular and copious system of jurisprudence, derived in a great measure from the civil law, but with considerable deviation, and possibly improvement. Boniface VIII. added a sixth part, thence called the Sext, itself divided into five books, in the nature of a supplement to the other five, of which it follows the arrangement, and composed of decisions promulgated since the pontificate of Gregory IX. New constitutions were subjoined by Clement V. and John XXII., under the name of Clementines and Extravagantes Joannis; and a few more of later pontiffs are included in the body of canon law, arranged as a second supplement after the manner of the Sext, and called Extravagantes Communes.

The study of this code became of course obligatory upon ecclesiastical judges. It produced a new class of legal practitioners, or canonists; of whom a great number added, like their brethren the civilians, their illustrations and commentaries, for which the obscurity and discordance of many passages, more especially in the Decretum, gave ample scope. From the general analogy of the canon law to that of Justinian, the two systems became, in a remarkable manner, collateral and mutually intertwined, the tribunals governed by either of them borrowing their rules of decision from the other in cases where their peculiar jurisprudence is silent or of dubious interpretation (1). But the canon law was almost entirely founded upon the legislative authority of the pope; the decretals are in fact but a new arrangement of the bold epistles of the most usurping pontiffs, and especially of Innocent III., with titles or rubrics, comprehending the substance of each in the compiler's language. The superiority of ecclesiastical to temporal power, or at least the absolute independence of the former, may be considered as a sort of keynote which regulates every passage in the canon law (2). It is expressly declared, that subjects owe no allegiance to an excommunicated lord, if after admonition he is not reconciled to the church (3). And the rubric prefixed to the declaration of Frederic II.'s

(1) Duck, De Usu Juris Civilis, l. i. c. 8.

(2) Constitutiones principum ecclesiasticis constitutionibus non præeminent, sed obsequuntur. Decretum, distinct. 10. Statutum generale laicorum ad ecclesias vel ad ecclesiasticas personas, vel eorum bona in earum præjudicium non extenditur. Decrotal. l. i. tit. 2. c. 10. Quæcunque à principibus in ordinibus vel in ecclesiasticis rebus decreta inveniuntur, nullius auctoritatis esse monstrantur. Decretum, distinct. 96.

(3) Domino excommunicato manente, subditi fidelitatem non debent; et si longo tempore in eâ perstiterint, et monitus non pareat ecclesiæ, ab ejus debito absolvuntur. Decretal. l. v. tit. 37. c. 13. I must acknowledge, that the decretal epistle of Honorius III. scarcely warrants this g

deposition in the council of Lyons asserts that the pope may dethrone the emperor for lawful causes (1). These rubrics to the decretals are not perhaps of direct authority as part of the law; but they express its sense, so as to be fairly cited instead of it (2). By means of her new jurisprudence, Rome acquired in every country a powerful body of advocates, who, though many of them were laymen, would, with the usual bigotry of lawyers, defend every pretension or abuse to which their received standard of authority gave sanction (3).

Mendicant orders.

Next to the canon law, I should reckon the institution of the mendicant orders among those circumstances which principally contributed to the aggrandizement of Rome. By the acquisition, and in some respects the enjoyment, or at least ostentation of immense riches, the ancient monastic orders had forfeited much of the public esteem (4). Austere principles as to the obligation of evangelical poverty were inculcated by the numerous sectaries of that age, and eagerly received by the people, already much alienated from an established hierarchy. No means appeared so efficacious to counteract this effect, as the institution of religious societies, strictly debarred from the insidious temptations of wealth. Upon this principle were founded the orders of Mendicant Friars, incapable, by the rules of their foundation, of possessing estates, and maintained only by alms and pious remunerations. Of these the two most celebrated were formed by St. Dominic and St. Francis of Assise, and established by the authority of Honorius III. in 1216 and 1223. These great reformers, who have produced so extraordinary an effect upon mankind, were of very different characters; the one, active and ferocious, had taken a prominent part in the crusade against the unfortunate Albigeois, and was among the first who bore the terrible name of inquisitor; while the other, a harmless enthusiast, pious and sincere, but hardly of sane mind, was much rather accessory to the intellectual than to the moral degradation of his species. Various other mendicant orders were instituted in the thirteenth century; but most of them were soon suppressed, and besides the two principal, none remain but the Augustin and the Carmelites (5).

neral proposition of the rubric, though it seems to lead to it.

(1) Papa imperatorem deponere potest ex causis legitimis. l. ii. tit. 13. c. 2.

(2) If I understand a bull of Gregory XIII., prefixed to his recension of the canon law, he confirms the rubrics or glosses along with the text; but I cannot speak with certainly as to his meaning.

(3) For the canon law, I have consulted, besides the Corpus juris Canonici, Tiraboschi, Storia della Litteratura, t. iv. and v.; Giannone, l. xiv. c. 3.; l. xix. c. 3.; l. xxii. c. 8. Fleury, Institutions au Droit Ecclésiastique. t. i. p. 10. and cinquième Discours sur l'Histoire Ecclés. Duck, De Usu Juris Civilis, l. i. c. 8. Schmidt, t. iv. p. 39. F. Paul, Treatise of Benefices, c. 31. I fear that my few citations from the canon law are not made scientifically; the proper mode of reference is to the first word; but the book and title are rather more convenient; and there are not many readers in England who will detect this impropriety.

(4) It would be easy to bring evidence from the writings of every successive century to the general viciousness of the regular clergy, whose memory it is sometimes the fashion to treat with respect. See particularly Muratori, Dissert. 65., and Fleury, huitième Discours. The latter observes that their great wealth was the cause of this relaxation in discipline.

(5) Mosheim's Ecclesiastical History. Fleury, huitième Discours. Crevier, Histoire de l'Université de Paris, t. i. p. 318.

These new preachers were received with astonishing approbation by the laity, whose religious zeal usually depends a good deal upon their opinion of sincerity and disinterestedness in their pastors. And the progress of the Dominican and Franciscan friars in the thirteenth century bears a remarkable analogy to that of our English Methodists. Not deviating from the faith of the church, but professing rather to teach it in greater purity, and to observe her ordinances with greater regularity, while they imputed supineness and corruption to the secular clergy, they drew round their sermons a multitude of such listeners as in all ages are attracted by similar means. They practised all the stratagems of itinerancy, preaching in public streets, and administering the communion on a portable altar. Thirty years after their institution, an historian complains that the parish churches were deserted, that none confessed except to these friars; in short, that the regular discipline was subverted (1). This uncontrouled privilege of performing sacerdotal functions, which their modern antitypes assume for themselves, was conceded to the mendicant orders by the favour of Rome. Aware of the powerful support they might receive in turn, the pontiffs of the thirteenth century accumulated benefits upon the disciples of Francis and Dominic. They were exempted from episcopal authority; they were permitted to preach or hear confessions without leave of the ordinary (2), to accept of legacies, and to inter in their churches. Such privileges could not be granted without resistance from the other clergy; the bishops remonstrated, the university of Paris maintained a strenuous opposition; but their reluctance served only to protract the final decision. Boniface VIII. appears to have peremptorily established the privileges and immunities of the mendicant orders in 1295 (3).

It was naturally to be expected, that the objects of such extensive favours would repay their benefactors by a more than usual obsequiousness and alacrity in their service. Accordingly, the Dominicans and Franciscans vied with each other in magnifying the papal supremacy. Many of these monks became eminent in canon law and scholastic theology. The great lawgiver of the schools, Thomas Aquinas, whose opinions the Dominicans especially treat as almost infallible, went into the exaggerated principles of his age in favour of the see of Rome (4). And as the professors of those sciences took nearly all the learning and logic of the times to their own share, it was hardly possible to repel their arguments by any direct reason-

(1) Matt. Paris, p. 607.

(2) Another reason for preferring the friars is given by Archbishop Peckham; quoniam casus episcopales reservati episcopis ab homine, vel à jure, communiter à Deum timentibus episcopis ipsis fratribus committuntur, et non presbyteris, *quorum simplicitas non sufficit aliis dirigendis.* Wilkin's Concilia, t. ii. p. 169.

(3) Crevier, Hist. de l'Université de Paris, t. i. et t. ii. passim. Fleury, ubi supra. Hist. du Droit Ecclésiastique Français, t. i. p. 394. 396. 446. Collier's Ecclesiastical History, vol. i. p. 437. 448. 452. Wood's Antiquities of Oxford, vol. i. p. 376. 480. (Gutch's edition.)

(4) It was maintained by the enemies of the mendicants, especially William St. Amour, that the pope could not give them a privilege to preach or perform the other duties of the parish priests. Thomas Aquinas answered, that a bishop might perform any spiritual functions within his diocese, or commit the charge to another instead, and that the pope, being to the whole church what a bishop is to his diocese, might do the same every where. Crevier, t. i. p. 474.

ing. But this partiality of the new monastic orders to the popes must chiefly be understood to apply to the thirteenth century, circumstances occurring in the next, which gave in some degree a different complexion to their dispositions in respect of the Holy See.

Papal dispensations of marriage.

We should not overlook, among the causes that contributed to the dominion of the popes, their prerogative of dispensing with ecclesiastical ordinances. The most remarkable exercise of this was as to the canonical impediments of matrimony. Such strictness as is prescribed by the Christian religion with respect to divorce was very unpalatable to the barbarous nations. They in fact paid it little regard; under the Merovingian dynasty, even private men put away their wives at pleasure (1). In many capitularies of Charlemagne, we find evidence of the prevailing licence of repudiation and even polygamy (2). The principles which the church inculcated were in appearance the very reverse of this laxity; yet they led indirectly to the same effect. Marriages were forbidden, not merely within the limits which nature, or those inveterate associations which we call nature, have rendered sacred, but as far as the seventh degree of collateral consanguinity, computed from a common ancestor (3). Not only was affinity, or relationship by marriage, put upon the same footing as that by blood; but a fantastical connexion, called spiritual affinity, was invented in order to prohibit marriage between a sponsor and godchild. An union, however innocently contracted, between parties thus circumstanced, might at any time be dissolved, and their subsequent cohabitation forbidden; though their children, I believe, in cases where there had been no knowledge of the impediment, were not illegitimate. One readily apprehends the facilities of abuse to which all this led; and history is full of dissolutions of marriage, obtained by fickle passion or coldhearted ambition, to which the church has not scrupled to pander on some suggestion of relationship. It is so difficult to conceive, I do not say any reasoning, but any honest superstition, which could have produced those monstrous regulations, that I was at first inclined to suppose them designed to give, by a side wind, that facility of divorce which a licentious people demanded, but the churc hcould not avowedly grant This refinement would however be unsupported by facts. The prohibition

(1) Marculfi Formulæ, l. ii. c. 30.

(2) Although a man might not marry again, when his wife had taken the veil, he was permitted to do so, if she was infected with the leprosy. Compare Capitularia Pippini, A. D. 853 and 755. If a woman conspired to murder her husband he might re-marry. Id. A. D. 753. A large proportion of Pepin's laws relate to incestuous connexions and divorces. One of Charlemagne seems to imply, that polygamy was not unknown even among priests. Si sacerdotes plures uxores habuerint, sacerdotio priventur, quia sæcularibus deteriores sunt. Capitul. A. D. 769. This seems to imply that their marriage with one was allowable, which nevertheless is contradicted by other passages in the Capitularies.

(3) See the canonical computation explained in St. Marc, t. iii. p. 876. Also in Blackstone's Law Tracts, Treatise on Consanguinity. In the eleventh century, an opinion began to gain ground in Italy, that third cousins might marry, being in the seventh degree according to the civil law. Peter Damian, a passionate abettor of Hildebrand and his maxims, treats this with horror, and calls it an heresy. Fleury, t. xiii. p. 152. St. Marc, ubi supra. This opinion was supported by a reference to the Institutes of Justinian; a proof, among several others, how much earlier that book was known than is vulgarly supposed.

is very ancient, and was really derived from the ascetic temper which introduced so many other absurdities (1). It was not until the twelfth century that either this or any other established rules of discipline were supposed liable to arbitrary dispensation; at least the stricter churchmen had always denied that the pope could infringe canons, nor had he asserted any right to do so (2). But Innocent III. laid down as a maxim, that out of the plenitude of his power, he might lawfully dispense with the law; and accordingly granted, among other instances of this prerogative, dispensations from impediments of marriage to the emperor Otho IV. (3). Similar indulgences were given by his successors, though they did not become usual for some ages. The fourth Lateran council in 1215 removed a great part of the restraint, by permitting marriages beyond the fourth degree, or what we call third cousins (4); and dispensations have been made more easy, when it was discovered that they might be converted into a source of profit They served a more important purpose by rendering it necessary for the princes of Europe, who seldom could marry into one another's houses without transgressing the canonical limits, to keep on good terms with the court of Rome, which, in several instances that have been mentioned, fulminated its censures against sovereigns who lived without permission in what was considered an incestuous union.

Dispensations from promissory oaths.

The dispensing power of the popes was exerted in several cases of a temporal nature, particularly in the legitimation of children, for purposes even of succession. This Innocent III. claimed as an indirect consequence of his right to remove the canonical impediment which bastardy offered to ordination; since it would be monstrous, he says, that one who is legitimate for spiritual functions should continue otherwise in any civil matter (5). But the most important and mischievous species of dispensations, was from the observance of promissory oaths. Two principles are laid down in the decretals; that an oath disadvantageous to the church is not binding; and that one extorted by force was of slight obligation, and might be annulled by ecclesiastical authority (6). As the first of these maxims gave the most unlimited privilege to the popes of breaking all faith of treaties which thwarted their interest or passion, a privilege which they

(1) Gregory I. pronounces matrimony to be unlawful as far as the seventh degree; and even, if I understand his meaning, as long as any relationship could be traced; which seems to have been the maxim of strict theologians, though not absolutely enforced. Du Cange, v. Generatio. Fleury, Hist. Ecclés. t. ix. p. 211.

(2) De Marca, l. iii. c. 7. 8. 14. Schmidt, t. iv. p. 235. Dispensations were originally granted only as to canonical penances, but not prospectively to authorize a breach of discipline. Gratian asserts that the pope is not bound by the canons; in which, Fleury observes, he goes beyond the False Decretals. Septième Discours, p. 291.

(3) Secundùm plenitudinem potestatis de jure possumus supra jus dispensare. Schmidt, t. iv. p. 235.

(4) Fleury, Institutions au Droit Ecclésiastique, t. i. p. 296.

(5) Decretal. l. iv. tit. 17. c. 13.

(6) Juramentum contra utilitatem ecclesiasticam præstitum non tenet. Decretal. l. ii. tit. 24. c. 27., et Sext. l. i. tit. 11. c. 1. A juramento per metum extorto ecclesia solet absolvere, et ejus transgressores ut peccantes mortaliter non punientur. Eodem lib. et tit. c. 15. The whole of this title in the decretals upon oaths seems to have given the first opening to the lax casuistry of succeeding times.

continually exercised (1), so the second was equally convenient to princes, weary of observing engagements towards their subjects or their neighbours. They reclaimed with a bad grace against the absolution of their people from allegiance by an authority to which they did not scruple to repair in order to bolster up their own perjuries. Thus Edward I., the strenuous asserter of his temporal rights, and one of the first who opposed a barrier to the encroachments of the clergy, sought at the hands of Clement V. a dispensation from his oath to observe the great statute against arbitrary taxation.

Encroachments of popes on the freedom of elections.

In all the earlier stages of papal dominion, the supreme head of the church had been her guardian and protector; and this beneficent character appeared to receive its consummation in the result of that arduous struggle which restored the ancient practice of free election to ecclesiastical dignities. Not long however after this triumph had been obtained, the popes began by little and little to interfere with the regular constitution. Their first step was conformable indeed to the prevailing system of spiritual independency. By the concordat of Calixtus, it appears that the decision of contested elections was reserved to the emperor, assisted by the metropolitan and suffragans. In a few cases during the twelfth century, this imperial prerogative was exercised, though not altogether undisputed (2). But it was consonant to the prejudices of that age to deem the supreme pontiff a more natural judge, as in other cases of appeal. The point was early settled in England, where a doubtful election to the archbishopric of York, under Stephen, was referred to Rome, and there kept five years in ligitation (3). Otho IV. surrendered this among other rights of the empire to Innocent III. by his capitulation (4), and from that pontificate the papal jurisdiction over such controversies became thoroughly recognized. But the real aim of Innocent, and perhaps of some of his predecessors, was to dispose of bishop-

(1) Take one instance out of many.—Piccinino, the famous condottiere of the fifteenth century, had promised not to attack Francis Sforza, at that time engaged against the pope. Eugenius IV. (the same excellent person who had annulled the compactata with the Hussites, releasing those who had sworn to them, and who afterwards made the king of Hungary break his treaty with Amurath II.) absolves him from this promise, on the express ground that a treaty disadvantageous to the church ought not to be kept. Sismondi, t. ix. p. 196. The church, in that age, was synonymous with the papal territories in Italy.

It was in conformity to this sweeping principle of ecclesiastical utility, that Urbain VI. made the following solemn and general declaration against keeping faith with heretics. Attendentes quòd hujusmodi confederationes, colligationes, et ligæ seu conventiones factæ cum hujusmodi hæreticis seu schismaticis postquàm tales effecti erant, sunt temerariæ, illicitæ, et ipso jure nullæ, (etsi fortè ante ipsorum lapsum in schisma, seu hæresin, initæ seu factæ fuissent,) etiam si forent juramento vel fide datâ firmatæ, aut confirmatione apostolicâ vel quâcumque firmitate aliâ roboratæ, postquàm tales, ut præmittitur, sunt effecti. Rymer, t. vii. p. 352.

It was of little consequence that all divines and sound interpreters of canon law maintain that the pope cannot dispense with the divine or moral law, as De Marca tells us, l. iii. c. 15., though he admits that others of less sound judgment assert the contrary; as was common enough, I believe, among the Jesuits at the beginning of the seventeenth century. His power of interpreting the law was of itself a privilege of dispensing with it.

(2) Schmidt, t. iii. p. 299.; t. iv. p. 149. According to the concordat, elections ought to be made in the presence of the emperor, or his officers; but the chapters contrived to exclude them by degrees, though not perhaps till the thirteenth century. Compare Schmidt, t. iii. p. 296.; t. iv. p. 146.

(3) Henry's Hist. of England, vol. v. p. 324. Lyttleton's Henry II. vol. i. p. 386.

(4) Schmidt, t. iv. p. 149. One of these was the *spolium*, or moveable estate of a bishop, which the

rics, under pretext of determining contests, as a matter of patronage. So many rules were established, so many formalities required by their constitutions, incorporated afterwards into the canon law, that the court of Rome might easily find means of annulling what had been done by the chapter, and bestowing the see on a favourite candidate (1). The popes soon assumed not only a right of decision, but of devolution; that is, of supplying the want of election, or the unfitness of the elected, by a nomination of their own (2). Thus Archbishop Langton, if not absolutely nominated, was at least chosen in an invalid and compulsory manner by the order of Innocent III., as we may read in our English historians. And several succeeding archbishops of Canterbury equally owed their promotion to the papal prerogative. Some instances of the same kind occurred in Germany, and it became the constant practice in Naples (3).

And on rights of patronage.

Mandats.

While the popes were thus artfully depriving the chapters of their right of election to bishoprics, they interfered in a more arbitrary manner with the collation of inferior benefices. This began, though in so insensible a manner as to deserve no notice but for its consequences, with Adrian IV., who requested some bishops to confer the next benefice that should become vacant on a particular clerk (4). Alexander III. used to solicit similar favours (5). These recommendatory letters were called mandats. But though such requests grew more frequent than was acceptable to patrons, they were preferred in moderate language, and could not decently be refused to the apostolic chair. Even Innocent III. seems in general to be aware that he is not asserting a right; though in one instance, I have observed his violent temper break out against the chapter of Poitiers, who had made some demur to the appointment of his clerk, and whom he threatens with excommunication and interdict (6). But, as we find in the history of all usurping governments, time changes anomaly into system, and injury into right; examples beget custom, and custom ripens into law; and the doubtful precedent of one generation becomes the fundamental maxim of another. Honorius III. requested that two prebends in every church might be preserved for the Holy See; but neither the bishops of France nor England, to whom he preferred this petition, were induced to comply with it (7). Gregory IX. pretended to act generously in limiting himself to a

emperor was used to seize upon his decease. p. 154. It was certainly a very *leonine* prerogative; but the popes did not fail at a subsequent time to claim it for themselves. Fleury, Institutions au Droit, t. i. p. 425. Lenfant, Concile de Constance, t. ii. p. 130.

(1) F. Paul, c. 20. Schmidt, t. iv. p. 177. 247.

(2) Thus we find it expressed, as captiously as words could be devised, in the decretals, l. i. tit. 6, c. 22. Electus à majori et saniori parte capituli, si est, et erat idoneus tempore electionis, confirmabatur: si autem erit indignus in ordinibus scientiâ vel ætate, et fuit scienter electus, electus a minori parte, si est dignus, confirmabitur.

A person canonically disqualified when presented to the pope for confirmation was said to be *postulatus*, not *electus*.

(3) Giannone, l. xiv. c. 6.; l. xix. c. 4.

(4) St. Marc, t. v. p. 41. Art de vérifier les Dates, t. i. p. 288. Encyclopédie, Art. Mandats.

(5) Schmidt, t. iv. p. 239.

(6) Innocentii III. Opera, p. 506.

(7) Matt. Paris, p. 267. De Marca, l. iv. c. 9.

single expectative, or letter directing a particular clerk to be provided with a benefice in every church (1). But his practice went much farther. No country was so intolerably treated by this pope and his successors as England, throughout the ignominious reign of Henry III. Her church seemed to have been so richly endowed only as the free pasture of Italian priests, who were placed, by the mandatory letters of Gregory IX. and Innocent IV., in all the best benefices. If we may trust a solemn remonstrance in the name of the whole nation, they drew from England, in the middle of the thirteenth century, sixty or seventy thousand marks every year; a sum far exceeding the royal revenue (2). This was asserted by the English envoys at the council of Lyons. But the remedy was not to be sought in remonstrances to the court of Rome, which exulted in the success of its encroachments. There was no defect of spirit in the nation to oppose a more adequate resistance; but the individual upon the throne sacrificed the public interest sometimes through habitual timidity, sometimes through silly ambition. If England, however, suffered more remarkably, yet other countries were far from being untouched. A German writer about the beginning of the fourteenth century mentions a cathedral, where out of about thirty-five vacancies of prebends that had occurred within twenty years, the regular patron had filled only two (3). The case was not very different in France, where the continual usurpations of the popes are said to have produced the celebrated Pragmatic Sanction of St. Louis. This edict, which is not of undisputed authority, contains three important provisions; namely, that all prelates and other patrons shall enjoy their full rights as to the collation of benefices, according to the canons; that churches shall possess freely their rights of election; and that no tax or pecuniary exaction shall be levied by the pope, without consent of the king, and of the national church (4). We do not find, however, that the French government acted up to the spirit of this ordinance, if it be genuine; and the Holy See continued to invade the right of collation with less ceremony than they had hitherto used. Clement IV. published a bull in 1266, which, after asserting an absolute prerogative of the supreme pontiff to dispose of all preferments, whether vacant or in reversion, confines itself in the enacting words to the reservation of such benefices as belong to persons dying at Rome (vacantes in curiâ) (5). These had for some time

(1) F. Paul on Benefices, c. 30.

(2) M. Paris, p. 579. 740.

(3) Schmidt, l. vi. p. 104.

(4) Ordonnances des Rois de France, t. i. p. 97. There are several material objections to the authenticity of this edict, and in particular that we do not find the king to have had any previous differences with the see of Rome; on the contrary, he was just indebted to Clement IV. for bestowing the crown of Naples on his brother the count of Provence. Velly has defended it, Hist. de France, t. vi. p. 57., and in the opinion of the learned Benedictine editors of l'Art de vérifier les Dates, t. i. p. 585., cleared up all difficulties as to its genuineness. In fact, however, the Pragmatic Sanction of St. Louis stands by itself, and can only be considered as a protestation against abuses which it was still impossible to suppress.

(5) Sext. Decretal. l. iii. t. iv. c. 2. F. Paul on Benefices, c. 35. This writer thinks the privilege of nominating benefices vacant in curia to have been among the first claimed by the popes, even before the usage of mandats. c. 40.

been reckoned as a part of the pope's special patronage; and their number, when all causes of importance were drawn to his tribunal, when metropolitans were compelled to seek their pallium in person, and even by a recent constitution, exempt abbots to repair to Rome for confirmation (1), not to mention the multitude who flocked thither as mere courtiers and hunters after promotion, must have been very considerable. Boniface VIII. repeated this law of Clement IV. in a still more positive tone (2); and Clement V. laid down as a maxim that the pope might freely bestow, as universal patron, all ecclesiastical benefices (3). In order to render these tenable by their Italian courtiers, the canons against pluralities and non-residence were dispensed with; so that individuals were said to have accumulated fifty or sixty preferments (4). It was a consequence from this extravagant principle, that the pope might prevent the ordinary collator upon a vacancy; and as this could seldom be done with sufficient expedition in places remote from his court, that he might make reversionary grants during the life of an incumbent, or reserve certain benefices specially for his own nomination.

Provisions, reserves, etc.

The persons as well as estates of ecclesiastics were secure from arbitrary taxation, in all the kingdoms founded upon the ruins of the empire, both by the common liberties of freemen, and more particularly by their own immunities and the horror of sacrilege (5). Such at least was their legal security, whatever violence might occasionally be practised by tyrannical princes. But this exemption was compensated by annual donatives, probably to a large amount, which the bishops and monasteries were accustomed, and as it were compelled, to make to their sovereigns (6). They were subject also, generally speaking, to the feudal services and prestations. Henry I. is said to have extorted a sum of money from the English church (7). But the first eminent instance of a general tax required from the clergy was the famous Saladine tithe; a tenth of all moveable estate, imposed by the kings of France and England upon all their subjects, with the consent of their great councils of prelates and barons, to defray the expense of their intended crusade. Yet even this contribution, though called for by the imminent peril of the Holy Land after the capture of Jerusalem, was not paid without reluctance; the clergy doubtless anticipating the future extension of such a precedent (8). Many years had not elapsed, when a new demand was made upon them, but from a different quarter. Innocent III. (the name continually recurs when we trace the commencement of an usurpation) imposed

Papal taxation of the clergy.

(1) Matt. Paris, p. 817.
(2) Sext. Decretal. l. iii. t. iv. c. 3. He extended the vacancy in curiâ to all places within two days' journey of the papal court.
(3) F. Paul, c. 35.
(4) Id. c. 38, 34, 35. Schmidt, t. iv. p. 104.
(5) Muratori, Dissert. 70. Schmidt, t. iii. p. 211.
(6) Id. Ibid. Du Cange, v. Dona.
(7) Eadmer, p. 83.
(8) Schmidt, t. iv. p. 212. Lyttleton's Henry II. vol. iii. p. 472. Velly, t. iii. p. 316.

in 1199 upon the whole church a tribute of one-fortieth of moveable estate, to be paid to his own collectors; but strictly pledging himself that the money should only be applied to the purposes of a crusade (1). This crusade ended, as is well known, in the capture of Constantinople. But the word had lost much of its original meaning; or rather that meaning had been extended by ambition and bigotry. Gregory IX. preached a crusade against the emperor Frederic, in a quarrel which only concerned his temporal principality, and the church of England was taxed by his authority to carry on this holy war (2). After some opposition the bishops submitted; and from that time no bounds were set to the rapacity of papal exactions. The usurers of Cahors and Lombardy, residing in London, took up the trade of agency for the pope; and in a few years, he is said, partly by levies of money, partly by the revenues of benefices, to have plundered the kingdom of 950,000 marks; a sum equivalent, I think, to not less than fifteen millions sterling at present. Innocent IV., during whose pontificate the tyranny of Rome, if we consider her temporal and spiritual usurpations together, reached perhaps its zenith, hit upon the device of ordering the English prelates to furnish a certain number of men at arms to defend the church at their expense. This would soon have been commuted into a standing escuage instead of military service (3). But the demand was perhaps not complied with, and we do not find it repeated. Henry III.'s pusillanimity would not permit any effectual measures to be adopted; and indeed he sometimes shared in the booty, and was indulged with the produce of taxes imposed upon his own clergy to defray the cost of his projected war against Sicily (4). A nobler example was set by the kingdom of Scotland: Clement IV. having, in 1267, granted the tithes of its ecclesiastical revenues for one of his mock crusades, King Alexander III., with the concurrence of the church, stood up against this encroachment, and refused the legate permission to enter his dominions (5). Taxation of the clergy was not so outrageous in other centuries; but the popes granted a tithe of benefices to St. Louis for each of his own crusades, and also for the expedition of Charles of Anjou against Manfred (6). In the council of Lyons,

(1) Innocent. Opera, p. 266.

(2) M. Paris, p. 470. It was hardly possible for the clergy to make any effective resistance to the pope without unravelling a tissue which they had been assiduously weaving. One English prelate distinguished himself in this reign by his strenuous protestation against all abuses of the church. This was Robert Grosstete, bishop of Lincoln, who died in 1253, the most learned Englishman of his time, and the first who had any tincture of Greek literature. Matthew Paris gives him a high character, which he deserved for his learning and integrity; one of his commendations is for keeping a good table. But Grosstete appears to have been imbued in a great degree with the spirit of his age, as to ecclesiastical power, though unwilling to yield it up to the pope: and it is a strange thing to reckon him among the precursors of the Reformation. M. Paris, p. 754. Berington's Literary History of the Middle Ages, p. 378.

(3) M. Paris, p. 613. It would be endless to multiply proofs from Matthew Paris, which indeed occur in almost every page. His laudable zeal against papal tyranny, on which some protestant writers have been so pleased to dwell, was a little stimulated by personal feelings for the abbey of St. Alban's; and the same remark is probably applicable to his love of civil liberty.

(4) Rymer, t. i. p. 599. etc. The substance of English ecclesiastical history during the reign of Henry III. may be collected from Henry, and still better from Collier.

(5) Dalrymple's Annals of Scotland, vol. i. p. 179.

(6) Velly, t. iv. p. 344.; t. v. p. 348.; t. vi. p. 47.

held by Gregory X. in 1274, a general tax of the same proportion was imposed on all the Latin church, for the pretended purpose of carrying on a holy war (1).

Disaffection towards the court of Rome.

These gross invasions of ecclesiastical property, however submissively endured, produced a very general disaffection towards the court of Rome. The reproach of venality and avarice was not indeed cast for the first time upon the sovereign pontiffs; but it had been confined, in earlier ages, to particular instances, not affecting the bulk of the catholic church. But, pillaged upon every slight pretence, without law and without redress, the clergy came to regard their once paternal monarch as an arbitrary oppressor. All writers of the thirteenth and following centuries complain in terms of unmeasured indignation, and seem almost ready to reform the general abuses of the church. They distinguished, however, clearly enough between the abuses which oppressed them and those which it was their interest to preserve, nor had the least intention of waving their own immunities and authority. But the laity came to more universal conclusions. A spirit of inveterate hatred grew up among them, not only towards the papal tyranny, but the whole system of ecclesiastical independence. The rich envied and longed to plunder the estates of the superior clergy; the poor learned from the Waldenses and other sectaries to deem such opulence incompatible with the character of evangelical ministers. The itinerant minstrels invented tales to satirize vicious priests, which a predisposed multitude eagerly swallowed. If the thirteenth century was an age of more extravagant ecclesiastical pretensions than any which had preceded, it was certainly one in which the disposition to resist them acquired greater consistence.

Progress of ecclesiastical jurisdiction,

To resist had indeed become strictly necessary, if the temporal governments of Christendom would occupy any better station than that of officers to the hierarchy. I have traced already the first stage of that ecclesiastical jurisdiction, which, through the partial indulgence of sovereigns, especially Justinian and Charlemagne, had become nearly independent of the civil magistrate. Several ages of confusion and anarchy ensued, during which the supreme regal authority was literally suspended in France, and not much respected in some other countries. It is natural to suppose, that ecclesiastical jurisdiction, so far as even that was regarded in such barbarous times, would be esteemed the only substitute for coercive law, and the best security against wrong. But I am not aware that it extended itself beyond its former limits, till about the beginning of the twelfth century. From that time it rapidly encroached upon the secular tribunals, and seemed to threaten the usurpation of an exclusive supremacy over all persons and causes. The bishops gave the tonsure indiscriminately,

(1) Velly, t. vi. p. 308. St. Marc, t. vi. p. 347.

in order to swell the list of their subjects. This sign of a clerical state, though below the lowest of their seven degrees of ordination, implying no spiritual office, conferred the privileges and immunities of the profession on all who wore an ecclesiastical habit, and had only once been married (1). Orphans and widows, the stranger and the poor, the pilgrim and the leper, under the appellation of persons in distress (miserabiles personæ), came within the peculiar cognizance and protection of the church; nor could they be sued before any lay tribunal. And the whole body of crusaders, or such as merely took the vow of engaging in a crusade, enjoyed the same clerical privileges.

But where the character of the litigant parties could not, even with this large construction, be brought within their pale, the bishops found a pretext for their jurisdiction in the nature of the dispute. Spiritual causes alone, it was agreed, could appertain to the spiritual tribunal. But the word was indefinite; and according to the interpreters of the twelfth century, the church was always bound to prevent and chastise the commission of sin. By this sweeping maxim, which we have seen Innocent III. apply to vindicate his controul over national quarrels, the common differences of individuals, which generally involve some charge of wilful injury, fell into the hands of a religious judge. One is almost surprised to find that it did not extend more universally, and might praise the moderation of the church. Real actions or suits relating to the property of land were always the exclusive province of the lay court, even where a clerk was the defendant (2). But the ecclesiastical tribunals took cognizance of breaches of contract, at least where an oath had been pledged, and of personal trusts (3). They had not only an exclusive jurisdiction over questions immediately matrimonial, but a concurrent one with the civil magistrate in France, though never in England, over matters incident to the nuptial contract, as claims of marriage portion, and of dower (4). They took the execution of testaments into their hands, on account of the legacies to pious uses, which testators were advised to bequeath (5). In process of time, and under favourable circumstances, they made still greater strides. They pretended a right to supply the defects, the doubts, or the negli-

(1) Clerici qui cum unicis et virginibus contraxerunt, si tonsuram et vestes deferant clericales, privilegium retineat——præsenti declaramus edicto, hujusmodi clericos conjugatos pro commissis ab iis excessibus vel delictis, trahi non posse criminaliter aut civiliter ad judicium sæculare. Bonifacius Octavus, in Sext. Decretal. l. iii. t. ii. c. i. Philip the Bold, however, had subjected these married clerks to taxes, and later ordinances of the French kings rendered them amenable to temporal jurisdiction; from which, in Naples, by various provisions of the Angevin line, they always continued free. Giannone, l. xix. c. 5.

(2) Decretal. l. ii. t. ii. Ordonnances des Rois, t. i. p. 40. (A. D. 1189.) In the council of Lambeth, in 1261, the bishops claim a right to judge inter clericos suos, vel inter laicos conquerentes et clericos defendentes, in personalibus actionibus super contractibus, aut delictis, aut quasi, i. e. quasi delictis. Wilkins, Concilia, t. i. p. 747.

(3) Ordonnances des Rois, p. 319. (A. D. 1290.)

(4) Idem, p. 40. 121. 220. 319.

(5) Id. p. 319. Glanvil, l. vii. c. 7. Sancho IV. gave the same jurisdiction to the clergy of Castile, Teoria de las Cortes, t. iii. p. 20.; and in other respects followed the example of his father Alfonso X. in favouring their encroachments. The church of Scotland seems to have had nearly the same jurisdiction as that of England. Pinkerton's Hist. of Scotland, vol. i. p. 173.

gence of temporal judges; and invented a class of mixed causes, whereof the lay or ecclesiastical jurisdiction took possession according to priority. Besides this extensive authority in civil disputes, they judged of some offences, which naturally belong to the criminal law, as well as of some others, which participate of a civil and criminal nature. Such were perjury, sacrilege, usury, incest, and adultery (1); from the punishment of all which the secular magistrate refrained, at least in England, after they had become the province of a separate jurisdiction. Excommunication still continued the only chastisement which the church could directly inflict. But the bishops acquired a right of having their own prisons for lay offenders (2), and the monasteries were the appropriate prisons of clerks. Their sentences of excommunication were enforced by the temporal magistrate by imprisonment or sequestration of effects; in some cases by confiscation or death (3).

and immunity.

The clergy did not forget to secure along with this jurisdiction their own absolute exemption from the criminal justice of the state. This, as I have above mentioned, had been conceded to them by Charlemagne; but how far the same privilege existed in countries not subject to his empire, such as England, or even in France and Germany during the three centuries after his reign, is what I am not able to assert. The False Decretals contain some passages in favour of ecclesiastical immunity, which Gratian repeats in his collection (4). About the middle of the twelfth century, the principle obtained general reception, and Innocent III. decided it to be an inalienable right of the clergy, whereof they could not be divested even by their own consent (5). Much less were any constitutions of princes, or national usages, deemed of force to abrogate such an important privilege (6). These, by the canon law, were invalid when they affected the rights and liberties of holy church (7). But the spiritual courts were charged with scandalously neglecting to visit the most atrocious offences of clerks with such punishment as they could inflict. The church could always absolve from her own censures; and confinement in a monastery, the usual sentence upon criminals, was frequently

(1) It was a maxim of the canon, as well as the common law, that no person should be punished twice for the same offence; therefore, if a clerk had been degraded, or a penance imposed on a layman, it was supposed unjust to proceed against him in a temporal court.

(2) Charlemagne is said by Giannone to have permitted the bishops to have prisons of their own, l. vi. c. 7.

(3) Giannone, l. xix. c. 5. t. iii. Schmidt, t. iv. p. 198.; t. vi. p. 125. Fleury, septième Discours, Mém. de l'Acad. des Inscr. t. xxxix. p. 603. Ecclesiastical jurisdiction not having been uniform in different ages and countries, it is difficult, without much attention, to distinguish its general and permanent attributes from those less completely established. Its description, as given in the Decretals, lib. ii. tit. ii., de Foro competenti, does not support the pretensions made by the canonists; nor come up to the sweeping definition of ecclesiastical jurisdiction by Boniface VIII. in the Sext. l. iii. tit. xxiii. c. 40. Sive ambæ partes hoc voluerint, sive una super causis ecclesiasticis, sive quæ ad forum ecclesiasticum ratione personarum, negotiorum, vel rerum de jure vel de antiquâ consuetudine pertinere noscuntur.

(4) Fleury, septième Discours.

(5) Fleury, septième Disc. Institutions au Droit Ecclés. t. ii. p. 8.

(6) In criminalibus causis in nullo casu possunt clerici ab aliquo quàm ab ecclesiastico judice condemnari, etiamsi consuetudo regia habeat ut fures à judicibus sæcularibus judicentur. Decretal. l. i. tit. i. c. 8.

(7) Decret. distinct. 96.

slight and temporary. Several instances are mentioned of heinous outrages that remained nearly unpunished through the shield of ecclesiastical privilege (1). And as the temporal courts refused their assistance to a rival jurisdiction, the clergy had no redress for their own injuries, and even the murder of a priest at one time, as we are told, was only punishable by excommunication (2).

Endeavours made to repress it in England.

Such an incoherent medley of laws and magistrates, upon the symmetrical arrangement of which all social œconomy mainly depends, could not fail to produce a violent collision. Every sovereign was interested in vindicating the authority of the constitutions which had been formed by his ancestors, or by the people whom he governed. But the first who undertook this arduous work, the first who appeared openly against ecclesiastical tyranny, was our Henry II. The Anglo-Saxon church, not so much connected as some others with Rome, and enjoying a sort of barbarian immunity from the thraldom of canonical discipline, though rich, and highly respected by a devout nation, had never, perhaps, desired the thorough independence upon secular jurisdiction at which the continental hierarchy aimed. William the Conqueror first separated the ecclesiastical from the civil tribunal, and forbad the bishops to judge of spiritual causes in the hundred court (3). His language is, however, too indefinite to warrant any decisive proposition as to the nature of such causes; probably they had not yet been carried much beyond their legitimate extent. Of clerical exemption from the secular arm we find no earlier notice than in the coronation oath of Stephen; which, though, vaguely expressed, may be construed to include it (4). But I am not certain, that the law of England had unequivocally recognized that claim at the time of the constitutions of Clarendon. It was at least an innovation, which the legislature might without scruple or transgression of justice abolish. Henry II., in that famous statute, attempted in three respects to limit the jurisdiction assumed by the church; asserting for his own judges the cognizance of contracts, however confirmed by oath, and of rights of advowson, and also that of offences committed by clerks, whom, as it is gently expressed, after conviction or confession the church ought not to protect (5). These

(1) Collier, vol. i. p. 351. It is laid down in the canon laws that a layman cannot be a witness in a criminal case against a clerk. Decretal. l. ii. tit. xx. c. 14.

(2) Lyttleton's Henry II., vol. iii. p. 332. This must be restricted to that period of open hostility between the church and state.

(3) Ut nullus episcopus vel archidiaconus de legibus episcopalibus amplius in Hundret placita teneant, nec causam quæ ad regimen animarum pertinet, ad judicium sæcularium hominum adducant. Wilkins, Leges Anglo-Saxon. p. 230.

Before the conquest, the bishop and earl sat together in the court of the county or hundred; and as we may infer from the tenor of this charter, ecclesiastical matters were decided loosely, and rather by the common law than according to the canons. This practice had been already forbidden by some canons enacted under Edgar, id. p. 83.; but apparently with little effect. The separation of the civil and ecclesiastical tribunals was not made in Denmark till the reign of Nicolas, who ascended the throne in 1105. Langebek, Script. Rer. Danic. t. iv. p. 380. Others refer the law to St. Canut, about 1080. t. ii. p. 209.

(4) Ecclesiasticarum personarum et omnium clericorum, et rerum eorum justitiam et potestatem, et distributionem bonorum ecclesiasticorum. in manu episcoporum esse perhibeo, et confirmo. Wilkins, Leges Anglo-Saxon. p. 310.

(5) Idem, p. 323, Lyttleton's Henry II. Collier, etc.

constitutions were the leading subject of difference between the king and Thomas Becket. Most of them were annulled by the pope, as derogatory to ecclesiastical liberty. It is not improbable, however, that if Louis VII. had played a more dignified part, the see of Rome, which an existing schism rendered dependent upon the favour of those two monarchs, might have receded in some measure from her pretensions. But France implicitly giving way to the encroachments of ecclesiastical power, it became impossible for Henry completely to withstand them.

The constitutions of Clarendon, however, produced some effect, and in the reign of Henry III. more unremitted and successful efforts began to be made to maintain the independence of temporal government. The judges of the king's court had until that time been themselves principally ecclesiastics, and consequently tender of spiritual privileges (1). But now abstaining from the exercise of temporal jurisdiction, in obedience to the strict injunctions of their canons (2), the clergy gave place to common lawyers, professors of a system very discordant from their own. These soon began to assert the supremacy of their jurisdiction by issuing writs of prohibition, whenever the ecclesiastical tribunals passed the boundaries which approved use had established (3). Little accustomed to such controul, the proud hierarchy chafed under the bit; several provincial synods reclaim against the pretensions of laymen to judge the anointed ministers whom they were bound to obey (4); the cognizance of rights of patronage and breaches of contract is boldly asserted (5); but firm and cautious, favoured by the nobility, though not much by the king, the judges receded not a step, and ultimately fixed a barrier which the church was forced to respect (6). In the ensuing reign of Edward I., an archbishop acknowledges the abstract right of the king's bench to issue prohibitions (7); and the statute entitled Circumspectè agatis, in the thirteenth year of that prince, while by its mode of expression it seems designed to guarantee the actual privileges of spiritual jurisdiction, had a tendency, especially with the disposition of the judges, to preclude the assertion of some which are not therein mentioned.

(1) Dugdale's Origines Juridicales, c. 8.

(2) Decretal. l. i. tit. xxxvii. c. 1. Wilkins, Concilia, t. ii. p. 4.

(3) Prynne has produced several extracts from the pipe-rolls of Henry II., where a person has been fined quia placitavit de laico feodo in curiâ christianitatis. And a bishop of Durham is fined five hundred marks quia tenuit placitum *de advocatione cujusdam ecclesiæ* in curiâ christianitatis. Epistle dedicatory to Prynne's Records, v. iii. Glanvil gives the form of a writ of prohibition to the spiritual court for enquiring de feodo laico; for it had jurisdiction over lands in frankalmoign. This is conformable to the constitutions of Clarendon, and shews that they were still in force; though Collier has the assurance to say, that they were repealed soon after Becket's death, supporting this also by a false quotation from Glanvil. Ecclesiast. Hist. v. i. p. 380. Lyttleton's Henry II. v. iii. p. 97.

(4) Cùm judicandi christos domini nulla sit laicis attributa potestas, apud quos manet necessitas obsequendi. Wilkins, Concilia, t. i. p. 747.

(5) Id. ibid.; et t. ii. p. 90.

(6) Vide Wilkins, Concilia, t. ii. passim.

(7) Licet prohibitiones hujusmodi à curiâ christianissimi regis nostri justè procul dubio, ut diximus, concedantur. Id. t. ii. p. 100. and p. 115. Yet after such an acknowledgment by Archbishop Peckham in the height of ecclesiastical power, and after a practice deducible from the age of Henry II., some protestants, as Archbishop Bancroft, (2 Inst. 609.); Gibson, (preface to Codex Jur. Eccl.); Collier, (Ecclesiast. Hist. vol. i. p. 522.) have complained that the court of king's bench should put any limits to their claims of spiritual jurisdiction.

Neither the right of advowson nor any temporal contract are specified in this act as pertaining to the church; and accordingly the temporal courts have ever since maintained an undisputed jurisdiction over them (1). They succeeded also partially in preventing the impunity of crimes perpetrated by clerks. It was enacted by the statute of Westminster, in 1275, or rather a construction was put upon that act, which is obscurely worded, that clerks indicted for felony should not be delivered to their ordinary, until an inquest had been taken of the matter of accusation; and, if they were found guilty, that their real and personal estate should be forfeited to the crown. In later times, the clerical privilege was not allowed till the party had pleaded to the indictment, and been duly convict, as is the practice at present (2).

Less vigorous in France.

The civil magistrates of France did not by any means exert themselves so vigorously for their emancipation. The same or rather worse usurpations existed, and the same complaints were made, under Philip Augustus, St. Louis, and Philip the Bold; but the laws of those sovereigns tend much more to confirm than to restrain ecclesiastical encroachments (3). Some limitations were attempted by the secular courts; and an historian gives us the terms of a confederacy among the French nobles in 1246, binding themselves by oath not to permit the spiritual judges to take cognizance of any matter, except heresy, marriage, and usury (4). Unfortunately, Louis IX. was almost as little disposed as Henry III. to shake off the yoke of ecclesiastical dominion. But other sovereigns in the same period, from various motives, were equally submissive. Frederic II. explicitly adopts the exemption of clerks from criminal as well as civil jurisdiction of seculars (5). And Alfonso X. introduced the same system in Castile; a kingdom where neither the papal authority nor the independence of the church had obtained any legal recognition until the promulgation of his code, which teems with all the principles

(1) The statute Circumspectè agatis, for it is acknowledged as a statute, though not drawn up in the form of one, is founded upon an answer of Edward I. to the prelates who had petitioned for some modification of prohibitions. Collier, always prone to exaggerate church authority, insinuates that the jurisdiction of the spiritual court over breaches of contract, even without oath, is preserved by this statute; but the express words of the king shew that none whatever was intended, and the archbishop complains bitterly of it afterwards. Wilkins, Concilia, t. ii. p. 118. Collier's Ecclesiast. History, vol. 1. p. 487. So far from having any cognizance of civil contracts not confirmed by oath, to which I am not certain that the church ever pretended in any country, the spiritual court had no jurisdiction at all even where an oath had intervened, unless there was a deficiency of proof by writing or witnesses. Glanvil, l. x. c. 12. Constitut. Clarendon. art. 15.

(2) 2 Inst. p. 163.

(3) It seems deducible from a law of Philip Augustus, Ordonnances des Rois, t. i. p. 39. that a clerk convicted of some heinous offences might be capitally punished after degradation; yet a subsequent ordinance, p. 43., renders this doubtful; and the theory of clerical immunity became afterwards more fully established.

(4) Matt. Paris, p. 629.

(5) Statuimus, ut nullus ecclesiasticam personam, in criminali quæstione vel civili, trahere ad judicium sæculare præsumat. Ordonnances des Rois de France, t. i. p. 611., where this edict is recited and approved by Louis Hutin. Philip the Bold had obtained leave from the pope to arrest clerks accused of heinous crimes, on condition of remitting them to the bishop's court for trial. Hist. du Droit Eccl. Franç. t. i. p. 426. A council at Bourges held in 1276 had so absolutely condemned all interference of the secular power with clerks, that the king was obliged to solicit this moderate favour. p. 421.

of the canon law (1). It is almost needless to mention that all ecclesiastical powers and privileges were incorporated with the jurisprudence of the kingdom of Naples, which, especially after the accession of the Angevin line, stood in a peculiar relation of dependence upon the Holy See (2).

Restraints on alienations in mortmain.

The vast acquisitions of landed wealth made for many ages by bishops, chapters, and monasteries, began at length to excite the jealousy of sovereigns. They perceived that, although the prelates might send their stipulated proportion of vassals into the field, yet there could not be that active co-operation which the spirit of feudal tenures required, and that the national arm was palsied by the diminution of military nobles. Again the reliefs upon succession, and similar dues upon alienation, incidental to fiefs, were entirely lost when they came into the hands of these undying corporations, to the serious injury of the feudal superior. Nor could it escape reflecting men, during the contest about investitures, that if the church peremptorily denied the supremacy of the state over her temporal wealth, it was but a just measure of retaliation or rather self-defence that the state should restrain her further acquisitions. Prohibition of gifts in mortmain, though unknown to the lavish devotion of the new kingdoms, had been established by some of the Roman emperors, to check the overgrown wealth of the hierarchy (3). The first attempt at a limitation of this description in modern times was made by Frederic Barbarossa, who, in 1158, enacted that no fief should be transferred either to the church or otherwise, without the permission of the superior lord. Louis IX. inserted a provision of the same kind in his Establishments (4). Castile had also laws of a similar tendency (5). A licence from the crown is said to have been necessary in England before the conquest for alienations in mortmain; but however that may be, there seems no reason to imagine that any restraint was put upon them by the common law before Magna Charta; a clause of which statute was construed to prohibit all gifts to religious houses without the consent of the lord of the fee. And by the 7th Edward I., alienations in mortmain are absolutely taken away; though the king might always exercise his prerogative of granting a licence, which was not supposed to be effected by the statute (6).

Boniface VIII.

It must appear, I think, to every careful inquirer that the papal authority, though manifesting out-

(1) Marina, Ensayo Historico-Critico sobre las Siete Partidas, c. 320, etc. Hist. du Droit Ecclés. Franç. t. i. p. 442.

(2) Giannone, l. xix. c. v.; l. xx. c. 8. One provision of Robert king of Naples is remarkable: it extends the immunity of clerks to their *concubines*. Ibid.

Villani strongly censures a law made at Florence, in 1345, taking away the personal immunity of clerks in criminal cases. Though the state could make such a law, he says, it had no right to do so against the liberties of holy church. l. xii. c. 43.

(3) Giannone, l. iii.

(4) Ordonnances des Rois, p. 213. See too p. 303. and alibi. Du Cange, v. Manus morta. *Amortissiment*, in Denisart, and other French law-books Fleury, Instit. au Droit, t. i. p. 350.

(5) Marina, Ensayo sobre las Siete Partidas, c. 235

(6) 2 Inst. p. 74. Blackstone, v. ii. c. 18.

wardly more show of strength every year, had been secretly undermined, and lost a great deal of its hold upon public opinion, before the accession of Boniface VIII. in 1294 to the pontifical throne. The clergy were rendered sullen by demands of money, invasions of the legal right of patronage, and unreasonable partiality to the mendicant orders; a part of the mendicants themselves had begun to declaim against the corruptions of the papal court; while the laity, subjects alike and sovereigns, looked upon both the head and the members of the hierarchy with jealousy and dislike. Boniface, full of inordinate arrogance and ambition, and not sufficiently sensible of this gradual change in human opinion, endeavoured to strain to a higher pitch the despotic pretensions of former pontiffs. As Gregory VII. appears the most usurping of mankind till we read the history of Innocent III., so Innocent III. is thrown into shade by the superior audacity of Boniface VIII. But independently of the less favourable dispositions of the public, he wanted the most essential quality for an ambitious pope, reputation for integrity. He was suspected of having procured through fraud the resignation of his predecessor Celestine V., and his harsh treatment of that worthy man afterwards seems to justify the reproach. His actions however display the intoxication of extreme self-confidence. If we may credit some historians, he appeared at the Jubilee in 1300, a festival successfully instituted by himself to throw lustre around his court and fill his treasury (1), dressed in imperial habits, with the two swords borne before him, emblems of his temporal as well as spiritual dominion over the earth (2).

His disputes with the king of England.

It was not long after his elevation to the pontificate, before Boniface displayed his temper. The two most powerful sovereigns of Europe, Philip the Fair and Edward the First, began at the same moment to attack in a very arbitrary manner the revenues of the church. The English clergy had, by their own voluntary grants, or at least those of the prelates in their name, paid frequent subsidies to the crown, from the beginning of the reign of Henry III. They had nearly in effect waved the ancient exemption, and retained only the common privilege of English freemen to tax themselves in a constitutional manner. But Edward I. came upon them with demands so frequent and exorbitant, that they were compelled to take advantage of a bull issued by Boniface, forbidding them to pay any contribution to the state.

(1) The Jubilee was a centenary commemoration, in honour of St. Peter and St. Paul, established by Boniface VIII. on the faith of an imaginary precedent a century before. The period was soon reduced to fifty years, and from thence to twenty-five, as it still continues. The court of Rome at the next jubilee will however read with a sigh the description given of that in 1300. Papa innumerabilem pecuniam ab iisdem recepit, quia die et nocte duo clerici stabant ad altare Sancti Pauli, tenentes in eorum manibus rastellos, rastellantes pecuniam infinitam. Muratori. Plenary indulgences were granted by Boniface to all who should keep their jubilee at Rome, and I suppose are still to be had on the same terms. Matteo Villani gives a curious account of the throng at Rome in 1350.

(2) Giannone, l. xxi. c. 3. Velly, t. vii. p. 149. I have not observed any good authority referred to for this fact, which is however in the character of Boniface.

The king disregarded every pretext, and seizing their goods into his hands, with other tyrannical proceedings, ultimately forced them to acquiesce in his extortion. It is remarkable, that the pope appears to have been passive throughout this contest of Edward I. with his clergy. But it was far otherwise in France. Philip the Fair had imposed a tax on the ecclesiastical order without their consent, a measure perhaps unprecedented, yet not more odious than the similar exactions of the king of England. Irritated by some previous differences, the pope issued his bull known by the initial words Clericis laicos, absolutely forbidding the clergy of every kingdom to pay, under whatever pretext of voluntary grant, gift, or loan, any sort of tribute to their government without his special permission. Though France was not particularly named, the king understood himself to be intended, and took his revenge by a prohibition to export money from the kingdom. This produced angry remonstrances on the part of Boniface; but the Gallican church adhered so faithfully to the crown, and shewed indeed so much willingness to be spoiled of their money, that he could not insist upon the most unreasonable propositions of his bull, and ultimately allowed that the French clergy might assist their sovereign by voluntary contributions, though not by way of tax.

and of France.

For a very few years after these circumstances, the pope and king of France appeared reconciled to each other; and the latter even referred his disputes with Edward I. to the arbitration of Boniface, "as a private person, Benedict of Gaeta, (his proper name,) and not as pontiff;" an almost nugatory precaution against his encroachment upon temporal authority (1). But a terrible storm broke out in the first year of the fourteenth century. A bishop of Pamiers, who had been sent as legate from Boniface with some complaint, displayed so much insolence, and such disrespect towards the king, that Philip, considering him as his own subject, was provoked to put him under arrest, with a view to institute a criminal process. Boniface, incensed beyond measure at this violation of ecclesiastical and legatine privileges, published several bulls addressed to the king and clergy of France, charging the former with a variety of offences, some of them not at all concerning the church, and commanding the latter to attend a council which he had summoned to meet at Rome. In one of these instruments, the genuineness of which does not seem liable to much exception, he declares

(1) Walt. Hemingford, p. 150. The award of Boniface, which he expresses himself to make both as pope and Benedict of Gaeta, is published in Rymer, t. ii. p. 819., and is very equitable. Nevertheless, the French historians agree to charge him with partiality towards Edward, and mention several proofs of it, which do not appear in the bull itself. Previous to its publication, it was allowable enough to follow common fame; but Velly, a writer always careless and not always honest, has repeated mere falsehoods from Mezeray and Baillet, while he refers to the instrument itself in Rymer, which disproves them. Hist. de France, t. vii. p. 139. M. Gaillard, one of the most candid critics in history that France ever produced, pointed out the error of her common historians in the Mém. de l'Académie des Inscriptions, t. xxxix. p. 642; and the editors of l'Art de vérifier les Dates have also rectified it.

in concise and clear terms that the king was subject to him in temporal as well as spiritual matters. This proposition had not hitherto been explicitly advanced, and it was now too late to advance it. Philip replied by a short letter in the rudest language, and ordered his bulls to be publicly burned at Paris. Determined however to shew the real strength of his opposition, he summoned representatives from the three orders of his kingdom. This is commonly reckoned the first assembly of the States General. The nobility and commons disclaimed with firmness the temporal authority of the pope, and conveyed their sentiments to Rome through letters addressed to the college of cardinals. The clergy endeavoured to steer a middle course, and were reluctant to enter into an engagement not to obey the pope's summons; yet they did not hesitate unequivocally to deny his temporal jurisdiction.

The council however opened at Rome; and notwithstanding the king's absolute prohibition, many French prelates held themselves bound to be present. In this assembly Boniface promulgated his famous constitution, denominated Unam Sanctam. The church is one body, he therein declares, and has one head. Under its command are two swords, the one spiritual, the other temporal; that to be used by the supreme pontiff himself; this by kings and knights, by his licence and at his will. But the lesser sword must be subject to the greater, and the temporal to the spiritual authority. He concludes by declaring the subjection of every human being to the see of Rome to be an article of necessary faith (1). Another bull pronounces all persons of whatever rank obliged to appear when personally cited before the audience or apostolical tribunal at Rome; "since such is our pleasure, who, by divine permission, rule the world." Finally, as the rupture with Philip grew more evidently irreconcileable, and the measures pursued by that monarch more hostile, he not only excommunicated him, but offered the crown of France to the emperor Albert I. This arbitrary transference of kingdoms was, like many other pretensions of that age, an improvement upon the right of deposing excommunicated sovereigns. Gregory VII. would not have denied, that a nation, released by his authority from its allegiance, must re-enter upon its original right of electing a new sovereign. But Martin IV. had assigned the crown of Aragon to Charles of Valois; the first instance, I think, of such an usurpation of power, but which was defended by the homage of Peter II., who had rendered his kingdom feudally dependent, like Naples, upon the Holy See (2). Albert felt no eagerness to realize

(1) Uterque est in potestate ecclesiæ, spiritalis scilicet gladius et materialis. Sed is quidem pro ecclesiâ, ille verò ab ecclesiâ exercendus: ille sacerdotis, is manu regum ac militum, sed ad nutum et patientiam sacerdotis. Oportet autem gladium esse sub gladio, et temporalem auctoritatem spiritali subjici potestati.—Porrò subesse Romano pontifici omni humanæ creaturæ declaramus, dicimus, definimus et pronunciamus omninò esse de necessitate fidei. Extravagant. l. i. tit. viii. c. 1.

(2) Innocent IV. had, however, in 1245, appointed one Bolan, brother to Sancho II., king of Portugal, to be a sort of coadjutor in the government of that kingdom, injoining the barons to honour

the liberal promises of Boniface; who was on the point of issuing a bull, absolving the subjects of Philip from their allegiance, and declaring his forfeiture, when a very unexpected circumstance interrupted all his projects.

It is not surprising, when we consider how unaccustomed men were in those ages to disentangle the artful sophisms, and detect the falsehoods in point of fact, whereon the papal supremacy had been established, that the king of France should not have altogether pursued the course most becoming his dignity and the goodness of his cause. He gave too much the air of a personal quarrel with Boniface to what should have been a resolute opposition to the despotism of Rome. Accordingly, in an assembly of his states at Paris, he preferred virulent charges against the pope, denying him to have been legitimately elected, imputing to him various heresies, and ultimately appealing to a general council and a lawful head of the church. These measures were not very happily planned; and experience had always shewn, that Europe would not submit to change the common chief of her religion for the purposes of a single sovereign. But Philip succeeded in an attempt apparently more bold and singular. Nogaret, a minister who had taken an active share in all the proceedings against Boniface, was secretly dispatched into Italy, and joining with some of the Colonna family, proscribed as Ghibelins, and rancorously persecuted by the pope, arrested him at Anagnia, a town in the neighbourhood of Rome, to which he had gone without guards. This violent action was not, one would imagine, calculated to place the king in an advantageous light; yet it led accidentally to a favourable termination of his dispute. Boniface was soon rescued by the inhabitants of Anagnia; but rage brought on a fever, which ended in his death; and the first act of his successor, Benedict XI., was to reconcile the king of France to the Holy See (1).

The sensible decline of the papacy is to be dated from the pontificate of Boniface VIII., who had strained its authority to a higher pitch than any of his predecessors. There is a spell wrought by uninterrupted good fortune, which captivates men's understanding, and persuades them, against reasoning and analogy, that violent power is immortal and irresistible. The spell is broken by the first change of success. *We* have seen the working and the dissipation of this charm with a rapidity to which the events of former times bear as remote a relation as the gradual processes of nature to her

him as their sovereign, at the same time declaring that he did not intend to deprive the king, or his lawful issue, if he should have any, of the kingdom. But this was founded on the request of the Portuguese nobility themselves, who were dissatisfied with Sancho's administration. Sext. Decretal. l. i. tit. viii. c. 2. Art de vérifier les Dates, t. i. p. 778.

Boniface invested James II. of Aragon with the crown of Sardinia, over which, however, the see of Rome had always pretended to a superiority, by virtue of the concession (probably spurious) of Louis the Debonair. He promised Frederic king of Sicily the empire of Constantinople, which, I suppose, was not a fief of the Holy See. Giannone, l. xxi. c. 3.

(1) Velly, Hist. de France, t. vii. p. 109—258. Crevier, Hist. de l'Université de Paris, t. ii. p. 170. etc.

deluges and her volcanoes. In tracing the papal empire over mankind, we have no such marked and definite crisis of revolution. But slowly, like the retreat of waters, or the stealthy pace of old age, that extraordinary power over human opinion has beeen subsiding for five centuries. I have already observed, that the symptoms of internal decay may be traced farther back. But as the retrocession of the Roman terminus under Adrian gave the first overt proof of decline in the ambitious energies of that empire, so the tacit submission of the successors of Boniface VIII. to the king of France might have been hailed by Europe as a token that their influence was beginning to abate. Imprisoned, insulted, deprived eventually of life by the violence of Philip, a prince excommunicated, and who had gone all lengths in defying and despising the papal jurisdiction, Boniface had every claim to be avenged by the inheritors of the same spiritual dominion. When Benedict XI. rescinded the bulls of his predecessor, and admitted Philip the Fair to communion without insisting on any concessions, he acted perhaps prudently, but gave a fatal blow to the temporal authority of Rome.

Removal of papal court to Avignon. 1305.

Benedict XI. lived but a few months, and his successor Clement V., at the instigation, as is commonly supposed of the king of France, by whose influence he had been elected, took the extraordinary step of removing the papal chair to Avignon. In this city it remained for more than seventy years; a period which Petrarch and other writers of Italy compare to that of the Babylonish captivity. The majority of the cardinals was always French, and the popes were uniformly of the same nation. Timidly dependent upon the court of France, they neglected the interests and lost the affections of Italy. Rome, forsaken by her sovereign, nearly forgot her allegiance; what remained of papal authority in the ecclesiastical territories was exercised by cardinal legates, little to the honour or advantage of the Holy See. Yet the series of Avignon pontiffs were far from insensible to Italian politics. These occupied on the contrary the greater part of their attention. But engaging in them from motives too manifestly selfish, and being regarded as a sort of foreigners from birth and residence, they aggravated that unpopularity and bad reputation which from various other causes attached itself to their court.

Contest of popes with Louis of Bavaria.

Though none of the supreme pontiffs after Boniface VIII. ventured upon such explicit assumptions of a general jurisdiction over sovereigns by divine right as he had made in his controversy with Philip, they maintained one memorable struggle for temporal power against the emperor Louis of Bavaria. Maxims long boldly repeated without contradiction, and engrafted upon the canon law, passed almost for articles of faith among the clergy, and those who trusted in them; and in despite of all ancient authorities, Clement V. laid it down, that the

popes, having transferred the Roman empire from the Greeks to the Germans, and delegated the right of nominating an emperor to certain electors, still reserved the prerogative of approving the choice, and of receiving from its subject upon his coronation an oath of fealty and obedience (1). This had a regard to Henry VII., who denied that his oath bore any such interpretation, and whose measures, much to the alarm of the court of Avignon, were directed towards the restoration of his imperial rights in Italy. Among other things, he conferred the rank of vicar of the empire upon Matteo Visconti, lord of Milan. The popes had for some time pretended to possess that vicariate during a vacancy of the empire; and after Henry's death insisted upon Visconti's surrender of the title. Several circumstances, for which I refer to the political historians of Italy, produced a war between the pope's legate and the Visconti family. The emperor Louis sent assistance to the latter, as heads of the Ghibelin or imperial party. This interference cost him above twenty years of trouble. John XXII., a man as passionate and ambitious as Boniface himself, immediately published a bull, in which he asserted the right of administering the empire during its vacancy, (even in Germany, as it seems from the generality of his expression,) as well as of deciding in a doubtful choice of the electors, to appertain to the Holy See; and commanded Louis to lay down his pretended authority, until the supreme jurisdiction should determine upon his election. Louis's election had indeed been questionable, but that controversy was already settled in the field of Muhldorf, where he had obtained a victory over his competitor the duke of Austria; nor had the pope ever interfered to appease a civil war during several years that Germany had been internally distracted by the dispute. The emperor, not yielding 1323
to this peremptory order, was excommunicated; his vassals were absolved from their oath of fealty, and all treaties of alliance between him and foreign princes annulled. Germany however remained firm; and if Louis himself had manifested more decision of mind, and uniformity in his conduct, the court of Avignon must have signally failed in a contest from which it did not in fact come out very successful. But while at one time he went intemperate lengths against John XXII., publishing scandalous accusations in an assembly of the citizens of Rome, and causing a Franciscan friar to be chosen in his room, after an irregular sentence of deposition, he was always anxious to negotiate terms of accommodation, to give up his own active partizans, and to make concessions the most derogatory to his independence and dignity. From John

(1) Romani principes, etc.... Romano pontifici, à quo approbationem personæ ad imperialis celsitudinis apicem assumendæ, necnon unctionem, consecrationem et imperii coronam accipiunt, sua submittere capita non reputarunt indignum, seque illi et eidem ecclesiæ, quæ à Græcis imperium transtulit in Germanos, et à quâ ad certos eorum principes jus et potestas eligendi regem, in imperatore postmodùm promovendum, pertinet, adstringe vinculo juramenti, etc. Clement. l. ii. tit. ix. T terms of the oath, as recited in this constitution, not warrant the pope's interpretation, but imp only that the emperor shall be the advocate defender of the church.

indeed he had nothing to expect; but Benedict XII. would gladly have been reconciled, if he had not feared the kings of France and Naples, political adversaries of the emperor, who kept the Avignon popes in a sort of servitude. His successor, Clement VI., inherited the implacable animosity of John XXII. towards Louis, who died without obtaining the absolution he had long abjectly solicited (1).

Spirit of resistance to papal usurpations.

Though the want of firmness in this emperor's character gave sometimes a momentary triumph to the popes, it is evident that their authority lost ground during the continuance of this struggle. Their right of confirming imperial elections was expressly denied by a diet held at Frankfort in 1338, which established as a fundamental principle that the imperial dignity depended upon God alone, and that whoever should be chosen by a majority of the electors became immediately both king and emperor, with all prerogatives of that station, and did not require the approbation of the pope (2). This law, confirmed as it was by subsequent usage, emancipated the German empire, which was immediately concerned in opposing the papal claims. But some who were actively engaged in these transactions took more extensive views, and assailed the whole edifice of temporal power which the Roman see had been constructing for more than two centuries. Several men of learning, among whom Dante, Ockham, and Marsilius of Padua, are the most conspicuous, investigated the foundations of this superstructure, and exposed their insufficiency (3). Literature, too long the passive handmaid of spiritual despotism, began to assert her nobler birthright of ministering to liberty and truth. Though the writings of these opponents of Rome are not always reasoned upon very solid principles, they at least taught mankind to scrutinize what had been received with implicit respect, and prepared the way for more philosophical discussions. About this time a new class of enemies had unexpectedly risen up against the rulers of the church. These were a part of the Franciscan order, who had seceded from the main body, on account of alleged deviations from the rigour of their primitive rule. Their schism was chiefly founded upon a quibble about the right of property in things consumable, which they maintained to be incompatible with the absolute poverty prescribed to them. This frivolous sophistry was

(1) Schmidt, Hist. des Allemands, t. iv. p. 446—536., seems the best modern authority for this contest between the empire and papacy. See also Struvius, Corp. Hist. German. p. 591.

(2) Quòd imperialis dignitas et potestas immediatè ex solo Deo, et quòd de jure et imperii consuetudine antiquitùs approbatâ postquàm aliquis in imperatorem sive regem ab electoribus imperii concorditer, vel majori parte eorumdem, statim ex solâ electione est rex verus et imperator Romanorum censendus et nominandus, et eidem debet ab omnibus imperio subjectis obedirl, et administrandi jura imperii, et cætera faciendi, quæ ad imperatorem verum pertinent, plenariam habet potestatem, nec papæ sive sedis apostolicæ aut alicujus alterius approbatione, confirmatione, auctoritate indiget vel consensu. Schmidt, p. 513.

(3) Giannone, l. xxii. c. 8. Schmidt, t. vi. p. 152. Dante was dead before these events, but his principles were the same. Ockham had already exerted his talents in the same cause by writing, in behalf of Philip IV. against Boniface, a dialogue between a knight and a clerk on the temporal supremacy of the church. This is published among other tracts of the same class in Goldastus, Monarchia Imperii, p. 13. This dialogue is translated entire in the Songe du Vergir, a more celebrated performance, ascribed to Raoul de Bresles under Charles V.

united with the wildest fanaticism, and as John XXII. attempted to repress their follies by a cruel persecution, they proclaimed aloud the corruption of the church, fixed the name of Antichrist upon the papacy, and warmly supported the emperor Louis throughout all his contention with the Holy See (1).

Rapacity of Avignon popes.

Meanwhile the popes who sat at Avignon continued to invade with surprising rapaciousness the patronage and revenues of the church. The mandats or letters directing a particular clerk to be preferred seem to have given place in a great degree to the more effectual method of appropriating benefices by reservation or provision, which was carried to an enormous extent in the fourteenth century. John XXII., the most insatiate of pontiffs, reserved to himself all the bishoprics in Christendom (2). Benedict XII. assumed the privilege for his own life of disposing of all benefices vacant by cession, deprivation, or translation. Clement VI. naturally thought that his title was equally good with his predecessor's, and continued the same right for his own time; which soon became a permanent rule of the Roman chancery (3). Hence the appointment of a prelate to a rich bishopric was generally but the first link in a chain of translation, which the pope could regulate according to his interest. Another capital innovation was made by John XXII. in the establishment of the famous tax, called annates, or first-fruits of ecclesiastical benefices, which he imposed for his own benefit. These were one year's value, estimated according to a fixed rate in the books of the Roman chancery, and payable to the papal collectors throughout Europe (4). Various other devices were invented to obtain money, which these degenerate popes, abandoning the magnificent schemes of their predecessors, were content to seek as their principal object. John XXII. is said to have accumulated an almost incredible treasure, exaggerated perhaps by the ill-will of his contemporaries (5); but it may be doubted whether even his avarice reflected greater dishonour on the church, than the licentious profuseness of Clement VI. (6).

These exactions were too much encouraged by the kings of France, who participated in the plunder, or at least required the mutual assistance of the popes for their own imposts on the clergy. John XXII.

(1) The schism of the rigid Franciscans or Fraticelli is one of the most singular parts of ecclesiastical history, and had a material tendency both to depress the temporal authority of the papacy, and to pave the way for the Reformation. It is fully treated by Mosheim, cent. 13 and 14.; and by Crevier, Hist. de l'Université de Paris, t. ii. p. 233—264. etc.

(2) Fleury, Institutions, etc. t. i. p. 368. F. Paul on Benefices, c. 37.

(3) F. Paul, c. 38. Translations of bishops had been made by the authority of the metropolitan, till Innocent III. reserved this prerogative to the Holy See. De Marca, l. vi. c. 8.

(4) F. Paul, c. 38. Fleury, p. 424. De Marca, l. vi. c. 10. Pasquier, l. iii. c. 28. The popes had long been in the habit of receiving a pecuniary gratuity when they granted the pallium to an archbishop, though this was reprehended by strict men, and even condemned by themselves. De Marca, ibid. It is noticed as a remarkable thing of Innocent IV., that he gave the pall to a German archbishop, without accepting any thing. Schmidt, t. iv. p. 172. The original and nature of annates is copiously treated in Lenfant, Concile de Constance, t. ii. p. 133.

(5) G. Villani puts this at 25,000,000 of florins, which it is hardly possible to believe. The Italians were credulous enough to listen to any report against the popes of Avignon. l. xi. c. 20. Giannone, l. xxii. c. 8.

(6) For the corruption of morals at Avignon during the secession, see De Sade, Vie de Pétrarque, t. i. p. 70. and several other passages.

obtained leave of Charles the Fair to levy a tenth of ecclesiastical revenues (1); and Clement VI., in return, granted two-tenths to Philip of Valois for the expenses of his war. A similar tax was raised by the same authority towards the ransom of John (2). These were contributions for national purposes unconnected with religion, which the popes had never before pretended to impose, and which the king might properly have levied with the consent of his clergy, according to the practice of England. But that consent might not always be obtained with ease, and it seemed a more expeditious method to call in the authority of the pope. A manlier spirit was displayed by our ancestors. It was the boast of England to have placed the first legal barrier to the usurpations of Rome, if we except the dubious and insulated Pragmatic Sanction of St. Louis, from which the practice of succeeding ages in France entirely deviates. The English barons had, in a letter addressed to Boniface VIII., absolutely disclaimed his temporal supremacy over their crown, which he had attempted to set up by intermeddling in the quarrel of Scotland (3). This letter, it is remarkable, is nearly coincident in point of time with that of the French nobility; and the two combined may be considered as a joint protestation of both kingdoms, and a testimony to the general sentiment among the superior ranks of the laity. A very few years afterwards, the parliament of Carlisle wrote a strong remonstrance to Clement V. against the system of provisions and other extortions, including that of first-fruits, which it was rumoured, they say, he was meditating to demand (4). But the court of Avignon was not to be moved by remonstrances; and the feeble administration of Edward II. gave way to ecclesiastical usurpations at home as well as abroad (5). His magnanimous son took a bolder line. After complaining ineffectually to Clement VI. of the enormous abuse which reserved almost all English benefices to the pope, and generally for the benefit of aliens (6), he passed in 1350 the famous statute of provisors. This act, reciting one supposed to have been made at the parliament of Carlisle, which, however, does not appear (7), and complaining in strong language of the mischief sustained

(1) Continuator Gul. de Nangis, in Spicilegio d'Achery, t. iii. p. 86. (folio edition.) Ita miseram ecclesiam, says this monk, unus tondet, alter excoriat.

(2) Fleury, Institut. au Droit ecclésiastique, t. ii. p. 245. Villaret, t. ix. p. 481. It became a regular practice for the king to obtain the pope's consent to lay a tax on his clergy; though he sometimes applied first to themselves. Garnier, t. xx. p. 141.

(3) Rymer, t. ii. p. 373. Collier, vol. i. p. 735.

(4) Rotuli Parliamenti, vol. i. p. 264. This passage, hastily read, has led Collier and other English writers, such as Henry and Blackstone, into the supposition that annates were imposed by Clement V. But the concurrent testimony of foreign authors refers this tax to John XXII., as the canon law also shews. Extravagant. Communes, l. iii. tit. ii. c. 11.

(5) The statute called Articuli cleri, in 1316, was directed rather towards confirming than limiting the clerical immunity in criminal cases.

(6) Collier, p. 546.

(7) It is singular, that Sir E. Coke should assert, that this act recites, and is founded upon the statute 35 E. I., de asportatis religiosorum; (2 Inst. 590.) whereas there is not the least resemblance in the words, and very little, if any, in the substance. Blackstone, in consequence, mistakes the nature of that act of Edward I., and supposes it to have been made against papal provisions, to which I do not perceive even an allusion. Whether any such statute was really made in the Carlisle parliament of 35 E. I., as is asserted both in 25 E. III. and in the roll of another parliament, 17 E. III. (Rot. Parl. t. ii. p. 144.) is hard to decide; and perhaps those who examine this point will have to chuse between wilful suppression and wilful interpolation.

through continual reservations of benefices, enacts that all elections and collations shall be free, according to law, and that, in case any provision or reservation should be made by the court of Rome, the king should for that turn have the collation of such benefice, if it be of ecclesiastical election or patronage (1). This devolution to the crown, which seems a little arbitrary, was the only remedy that could be effectual against the connivance and timidity of chapters and spiritual patrons. We cannot assert that a statute so nobly planned was executed with equal steadiness. Sometimes by royal dispensation, sometimes by neglect or evasion, the papal bulls of provision were still obeyed, though fresh laws were enacted to the same effect as the former. It was found on examination in 1367, that some clerks enjoyed more than twenty benefices by the pope's dispensation (2). And the parliaments both of this and of Richard II.'s reign invariably complain of the disregard shewn to the statutes of provisors. This led to other measures, which I shall presently mention.

Return of popes to Rome.

The residence of the popes at Avignon gave very general offence to Europe, and they could not themselves avoid perceiving the disadvantage of absence from their proper diocese, the city of St. Peter, the source of all their claims to sovereign authority. But Rome, so long abandoned, offered but an inhospitable reception; Urban V. returned to Avignon, after a short experiment of the capital; and it was not till 1376 that the promise, often repeated and long delayed, of restoring the papal chair to the metropolis of Christendom, was ultimately fulfilled by Gregory XI. His death, which happened soon afterwards, prevented, it is said, a second flight that he was preparing. This was followed by the great schism, one of the most remarkable events in ecclesiastical history. It is a difficult and by no means an interesting question to determine the validity of that contested election, which distracted the Latin church for so many years. All contemporary testimonies are subject to the suspicion of partiality in a cause where no one was permitted to be neutral. In one fact however there is a common agreement, that the cardinals, of whom the majority were French, having assembled in conclave for the election of a successor to Gregory XI., were disturbed by a tumultuous populace, who demanded with menaces a Roman, or at least, an Italian pope. This tumult appears to have been sufficiently violent to excuse, and in fact did produce, a considerable degree of intimidation. After some time, the cardinals made choice of the archbishop of Bari, a Neapolitan, who assumed the name of Urban VI. His election satisfied the populace, and tranquillity was restored. The cardinals announced their choice to the absent members of their college, and behaved towards Urban as their pope for severa

Contested election of Urban VI. and Clement VII. 1377

(1) 25 E. III. stat. 6. (2) Collier, p. 568.

weeks. But his uncommon harshness of temper giving them offence, they withdrew to a neighbouring town, and protesting that his election had been compelled by the violence of the Roman populace, annulled the whole proceeding, and chose one of their own number, who took the pontifical name of Clement VII. Such are the leading circumstances which produced the famous schism. Constraint is so destructive of the essence of election, that suffrages given through actual intimidation ought, I think, to be held invalid, even without minutely inquiring whether the degree of illegal force was such as might reasonably overcome the constancy of a firm mind. It is improbable that the free votes of the cardinals would have been bestowed on the archbishop of Bari; and I should not feel much hesitation in pronouncing his election to have been void. But the sacred college unquestionably did not use the earliest opportunity of protesting against the violence they had suffered; and we may infer almost with certainty, that if Urban's conduct had been more acceptable to that body, the world would have heard little of the transient riot at his election. This however opens a delicate question in jurisprudence; namely, under what circumstances acts, not only irregular, but substantially invalid, are capable of receiving a retro-active confirmation by the acquiescence and acknowledgment of parties concerned to oppose them. And upon this, I conceive, the great problem of legitimacy between Urban and Clement will be found to depend (1).

The Great Schism.

Whatever posterity may have judged about the pretensions of these competitors, they at that time shared the obedience of Europe in nearly equal proportions. Urban remained at Rome; Clement resumed the station of Avignon. To the former adhered Italy, the Empire, England, and the nations of the north; the latter retained in his allegiance France, Spain, Scotland, and Sicily. Fortunately for the church, no question of religious faith intermixed itself with this schism; nor did any other impediment to reunion exist, than the obstinacy and selfishness of the contending parties. As it was impossible to come to any agreement on the original merits, there seemed to be no means of healing the wound but by the abdication of both popes and a fresh undisputed election. This was the general wish of Europe, but urged with particular zeal by the court of France, and above all, by the university of Paris, which esteems this period the most honourable in her annals. The cardinals however of neither obedience would recede so far from their party as to suspend the election of a successor upon a vacancy of the pontificate, which would have at least removed one-half of the obstacle. The Roman conclave accord-

(1) Lenfant has collected all the original testimonies on both sides in the first book of his Concile de Pise. No positive decision has ever been made on the subject, but the Roman popes are numbered in the commonly received list, and those of Avignon are not. The modern Italian writers express no doubt about the legitimacy of Urban; the French at most intimate, that Clement's pretensions were not to be wholly rejected. But I am saying too much on a question so utterly unimportant.

ingly placed three pontiffs successively, Boniface IX., Innocent VI., and Gregory XII. in the seat of Urban VI.; and the cardinals at Avignon, upon the death of Clement in 1394, elected Benedict XIII., (Peter de Luna,) famous for his inflexible obstinacy in prolonging the schism. He repeatedly promised to sacrifice his dignity for the sake of union. But there was no subterfuge to which this crafty pontiff had not recourse in order to avoid compliance with his word, though importuned, threatened, and even besieged in his palace at Avignon. Fatigued by his evasions, France withdrew her obedience, and the Gallican church continued for a few years without acknowledging any supreme head. But this step, which was rather the measure of the university at Paris than of the nation, it seemed advisable to retract; and Benedict was again obeyed, though France continued to urge his resignation. A second subtraction of obedience, or at least declaration of neutrality, was resolved upon, as preparatory to the convocation of a general council. On the other hand, those who sat at Rome displayed not less insincerity. Gregory XII. bound himself by oath on his accession to abdicate when it should appear necessary. But while these rivals were loading each other with the mutual reproach of schism, they drew on themselves the suspicion of at least a virtual collusion in order to retain their respective stations. At length, the cardinals of both parties, wearied with so much dissimulation, deserted their masters, and summoned a general council to meet at Pisa (1).

Council of Pisa 1409

The council assembled at Pisa deposed both Gregory and Benedict, without deciding in any respect as to their pretensions, and elected Alexander V. by its own supreme authority. This authority, however, was not universally recognized; the schism, instead of being healed, became more desperate; for as Spain adhered firmly to Benedict, and Gregory was not without supporters, there were now three contending pontiffs in the church. A general council was still, however, the favourite and indeed the sole remedy; and John XXIII., successor of Alexander V., was reluctantly prevailed upon, or perhaps trepanned into convoking one to meet at Constance.

of Constance; 1414

In this celebrated assembly he was himself deposed; a sentence which he incurred by that tenacious clinging to his dignity, after repeated promises to abdicate, which had already proved fatal to his competitors. The deposition of John, confessedly a legitimate pope, may strike us as an extraordinary measure. But, besides the opportunity it might afford of restoring union, the council found a pretext for this sentence in his enormous vices, which indeed they seem to have taken upon common fame without any judicial process. The true motive, however, of their proceedings against him was a desire to make a signal display of a new system which had rapidly gained ground, and which I may venture to call the whig

(1) Villaret. Lenfant, Concile de Pise. Crevier, Hist. de l'Université de Paris, t. iii.

principles of the Catholic church. A great question was at issue, whether the polity of that establishment should be an absolute, or an exceedingly limited monarchy. The papal tyranny, long endured and still increasing, had excited an active spirit of reformation which the most distinguished ecclesiastics of France and other countries encouraged. They recurred, as far as their knowledge allowed, to a more primitive discipline than the canon law, and elevated the supremacy of general councils. But in the formation of these they did not scruple to introduce material innovations. The bishops have usually been considered the sole members of ecclesiastical assemblies. At Constance, however, sat and voted not only the chiefs of monasteries, but the ambassadors of all Christian princes, the deputies of universities, with a multitude of inferior theologians, and even doctors of law (1). These were naturally accessible to the pride of sudden elevation, which enabled them to controul the strong, and humiliate the lofty. In addition to this, the adversaries of the court of Rome carried another not less important innovation. The Italian bishops, almost universally in the papal interests, were so numerous, that if suffrages had been taken by the head, their preponderance would have impeded any measures of transalpine nations towards reformation. It was determined, therefore, that the council should divide itself into four nations, the Italian, the German, the French, and the English; each with equal rights, and that every proposition having been separately discussed, the majority of the four should prevail (2). This revolutionary spirit was very unacceptable to the cardinals, who submitted reluctantly, and with a determination, that did not prove altogether unavailing, to save their papal monarchy by a dexterous policy. They could not, however, prevent the famous resolutions of the fourth and fifth sessions, which declare that the council has received by divine right an authority to which every rank, even the papal, is obliged to submit, in matters of faith, in the extirpation of the present schism, and in the reformation of the church both in its head and its members; and that every person, even a pope, who shall obstinately refuse to obey that council, or any other lawfully assembled, is liable to such punishment as shall be necessary (3). These decrees are the great pillars of that moderate theory with respect to the papal authority, which distinguished the

(1) Lenfant, Concile de Constance, t. i. p. 107. (edit. 1727.) Crevier, t. iii. p. 405. It was agreed, that the ambassadors could not vote upon articles of faith, but only on questions relating to the settlement of the church. But the second order of ecclesiastics were allowed to vote generally.

(2) This separation of England, as a co-equal limb of the council, gave great umbrage to the French, who maintained that, like Denmark and Sweden, it ought to have been reckoned along with Germany. The English deputies came down with a profusion of authorities to prove the antiquity of their monarchy, for which they did not fail to put in requisition the immeasurable pedigrees of Ireland. Joseph of Arimathea, who planted Christianity and his stick at Glastonbury, did his best to help the cause. The recent victory of Azincourt, I am inclined to think, had more weight with the council. Lenfant, t. ii. p. 46.

At a time when a very different spirit prevailed, the English bishops under Henry II. and Henry III. had claimed as a right, that no more than four of their number should be summoned to a general council. Hoveden, p. 320.; Carte, vol. ii. p. 84. This was like boroughs praying to be released from sending members to parliament.

(3) Id. p. 164. Crevier, t. iii. p. 417.

Gallican church, and is embraced, I presume, by almost all laymen and the major part of ecclesiastics on this side of the Alps. They embarrass the more popish churchmen as the Revolution does our English tories; some boldly impugn the authority of the council of Constance, while others chicane upon the interpretation of its decrees. Their practical importance is not, indeed, direct; universal councils exist only in possibility; but the acknowledgment of a possible authority paramount to the see of Rome has contributed, among other means, to check its usurpations.

The purpose for which these general councils had been required, next to that of healing the schism, was the reformation of abuses. All the rapacious exactions, all the scandalous venality of which Europe had complained, while unquestioned pontiffs ruled at Avignon, appeared light in comparison of the practices of both rivals during the schism. Tenths repeatedly levied upon the clergy, annates rigorously exacted and enhanced by new valuations, fees annexed to the complicated formalities of the papal chancery, were the means by which each half of the church was compelled to reimburse its chief for the subtraction of the other's obedience. Boniface IX., one of the Roman line, whose fame is a little worse than that of his antagonists, made a gross traffic of his patronage; selling the privileges of exemption from ordinary jurisdiction, of holding benefices in commendam, and other dispensations invented for the benefit of the Holy See (1). Nothing had been attempted at Pisa towards reformation. At Constance the majority were ardent and sincere; the representatives of the French, German, and English churches met with a determined and, as we have seen, not always unsuccessful resolution to assert their ecclesiastical liberties. They appointed a committee of reformation, whose recommendations, if carried into effect, would have annihilated almost entirely that artfully constructed machinery by which Rome had absorbed so much of the revenues and patronage of the church. But men, interested in perpetuating these abuses, especially the cardinals, improved the advantages which a skilful government always enjoys in playing against a popular assembly. They availed themselves of the jealousies arising out of the division of the council into nations, which exterior political circumstances had enhanced. France, then at war with England, whose pretensions to be counted as a fourth nation she had warmly disputed, and not well disposed towards the emperor Sigismund, joined with the Italians against the English and German members of the council in a matter of the utmost importance, the immediate election of a pope before the articles of reformation should be finally concluded. These two nations, in return, united with the Italians to chuse the cardinal Colonna, against the advice of the French divines, who objected to any member of the sacred college. The court of Rome were gainers in

(1) Lenfant, Hist. du Concile de Pise, passim. Crevier, Villaret, Schmidt, Collier.

both questions. Martin V., the new pope, soon evinced his determination to elude any substantial reform. After publishing a few constitutions tending to redress some of the abuses that had arisen during the schism, he contrived to make separate conventions with the several nations, and as soon as possible dissolved the council (1).

By one of the decrees past at Constance, another general council was to be assembled in five years, a second at the end of seven more, and from that time a similar representation of the church was to meet every ten years. Martin V. accordingly convoked a council at Pavia, which, on account of the plague, was transferred to Siena; but nothing of importance was transacted by this assembly (2). That which he summoned seven years afterwards to the city of Basle had very different results. The pope, dying before the meeting of this council, was succeeded by Eugenius IV., who, anticipating the spirit of its discussions, attempted to crush its independence in the outset, by transferring the place of session to an Italian city. No point was reckoned so material in the contest between the popes and reformers, as whether a council should sit in Italy or beyond the Alps. The council of Basle began, as it proceeded, in open enmity to the court of Rome. Eugenius, after several years had elapsed in more or less hostile discussions, exerted his prerogative of removing the assembly to Ferrara, and from thence to Florence. For this he had a specious pretext in the negotiation, then apparently tending to a prosperous issue, for the reunion of the Greek church; a triumph, however transitory, of which his council at Florence obtained the glory. On the other hand, the assembly at Basle, though much weakened by the defection of those who adhered to Eugenius, entered into compacts with the Bohemian insurgents more essential to the interests of the church than any union with the Greeks, and completed the work begun at Constance by abolishing the annates, the reservations of benefices, and other abuses of papal authority. In this it received the approbation of most princes; but when, provoked by the endeavours of the pope to frustrate its decrees, it proceeded so far as to suspend and even to depose him, neither France nor Germany concurred in the sentence. Even the council of Constance had not absolutely asserted a right of deposing a lawful pope, except in case of heresy, though their conduct towards John could not otherwise be justified (3). This

of Basle. 1433

(1) Lenfant, Concile de Constance. The copiousness as well as impartiality of this work justly render it an almost exclusive authority. Crevier (Histoire de l'Université de Paris, t. iii.) has given a good abridgment; and Schmidt (Hist. des Allemands, t. v.) is worthy of attention.

(2) Lenfant, Guerre des Hussites, t. i. p. 223.

(3) The council of Basle endeavoured to evade this difficulty, by declaring Eugenius a relapsed heretic. Lenfant, Guerre des Hussites, t. ii. p. 98. But, as the church could discover no heresy in his disagreement with that assembly, the sentence of deposition gained little strength by this previous decision. The bishops were unwilling to take this violent step against Eugenius; but the minor theologians, the democracy of the Catholic church, whose right of suffrage seems rather an anomalous infringement of episcopal authority, pressed it with much heat and rashness. See a curious passage on this subject in a speech of the Cardinal of Arles. Lenfant, t. ii. p. 225.

question indeed of ecclesiastical public law seems to be still undecided. The fathers of Basle acted however with greater intrepidity than discretion, and not perhaps sensible of the change that was taking place in public opinion, raised Amadeus, a retired duke of Savoy, to the pontifical dignity by the name of Felix V. They thus renewed the schism, and divided the obedience of the Catholic church for a few years. The empire however as well as France observed a singular and not very consistent neutrality respecting Eugenius as lawful pope, and the assembly at Basle as a general council. England warmly supported Eugenius, and even adhered to his council at Florence; Aragon and some countries of smaller note acknowledged Felix. But the partizans of Basle became every year weaker; and Nicholas V., the successor of Eugenius, found no great difficulty in obtaining the cession of Felix, and terminating this schism. This victory of the court of Rome over the council of Basle nearly counterbalanced the disadvantageous events at Constance, and put an end to the project of fixing permanent limitations upon the head of the church by means of general councils. Though the decree that described the convocation of a council every ten years was still unrepealed, no absolute monarchs have ever more dreaded to meet the representatives of their people, that the Roman pontiffs have abhorred the name of those ecclesiastical synods; once alone, and that with the utmost reluctance, has the catholic church been convoked since the council of Basle; but the famous assembly to which I allude does not fall within the scope of my present undertaking (1).

It is a natural subject of speculation, what would have been the effects of these universal councils, which were so popular in the fifteenth century, if the decree passed at Constance for their periodical assembly had been regularly observed. Many catholic writers of the moderate or cisalpine school have lamented their disuse, and ascribed to it that irreparable breach which the Reformation has made in the fabric of their church. But there is almost an absurdity in conceiving their permanent existence. What chemistry could have kept united such heterogeneous masses, furnished with every principle of mutual repulsion? Even in early times, when councils, though nominally general, were composed of the subjects of the Roman empire, they had been marked by violence and contradiction: what then could have been expected from the delegates of independent kingdoms, whose ecclesiastical polity, whatever may be said of the spiritual unity of the church, had long been far too intimately blended with that of the state, to admit of any general controul without its assent? Nor, beyond the zeal, un-

(1) There is not, I believe, any sufficient history of the council of Basle. Lenfant designed to write it from the original acts, but finding his health decline, intermixed some rather imperfect notices of its transactions with his history of the Hussite war, which is commonly quoted under the title of History of the Council of Basle. Schmidt, Crevier, Villaret, are still my other authorities.

questionably sincere, which animated their members, especially at Basle, for the abolition of papal abuses, is there any thing to praise in their conduct, or to regret in their cessation. The statesman, who dreaded the encroachments of priests upon the civil government, the Christian, who panted to see his rites and faith purified from the corruption of ages, found no hope of improvement in these councils. They took upon themselves the pretensions of the popes whom they attempted to supersede. By a decree of the fathers at Constance, all persons, including princes, who should oppose any obstacle to a journey undertaken by the emperor Sigismund, in order to obtain the cession of Benedict, are declared excommunicated, and deprived of their dignities, whether secular or ecclesiastical (1). Their condemnation of Huss and Jerome of Prague, and the scandalous breach of faith which they induced Sigismund to commit on that occasion, are notorious. But perhaps it is not equally so, that this celebrated assembly recognized by a solemn decree the flagitious principle which it had practised, declaring that Huss was unworthy, through his obstinate adherence to heresy, of any privilege; nor ought any faith or promise to be kept with him, by natural, divine, or human law, to the prejudice of the catholic religion (2). It will be easy to estimate the claims of this congress of theologians to our veneration, and to weigh the retrenchment of a few abuses against the formal sanction of an atrocious maxim.

It was not however necessary for any government of tolerable energy to seek the reform of those abuses which affected the independence of national churches, and the integrity of their regular discipline, at the hands of a general council. Whatever difficulty there might be in overturning the principles founded on the decretals of Isidore, and sanctioned by the prescription of many centuries, the more flagrant encroachments of papal tyranny were fresh innovations, some within the actual generation, others easily to be traced up, and continually disputed. The principal European nations determined, with different degrees indeed of energy, to make a stand

(1) Lenfant, t. i. p. 489.

(2) Nec aliqua sibi fides aut promissio, de jure naturali, divino et humano, fuerit in prejudicium Catholicæ fidei observanda. Lenfant, t. i. p. 491.

This proposition is the great disgrace of the council in the affair of Huss. But the violation of his safe-conduct being a famous event in ecclesiastical history, and which has been very much disputed with some degree of erroneous statement on both sides, it may be proper to give briefly an impartial summary. 1. Huss came to Constance with a safe-conduct of the emperor, very loosely worded, and not directed to any individuals. Lenfant, t. i. p. 59. 2. This pass however was binding upon the emperor himself, and was so considered by him, when he remonstrated against the arrest of Huss. Id. p. 73. 83. 3. It was not binding on the council, who possessed no temporal power, but had a right to decide upon the question of heresy. 4. It is not manifest by what civil authority Huss was arrested, nor can I determine how far the imperial safe-conduct was a legal protection within the city of Constance. 5. Sigismund was persuaded to acquiesce in the capital punishment of Huss, and even to make it his own act; (Lenfant, p. 409.) by which he manifestly broke his engagement. 6. It is evident, that in this he acted by the advice and sanction of the council, who thus became accessary to the guilt of his treachery.

The great moral to be drawn from the story of John Huss's condemnation is, that no breach of faith can be excused by our opinion of ill desert in the party, or by a narrow interpretation of our own engagements. Every capitulation ought to be construed favourably for the weaker side. In such cases, it is emphatically true, that if the letter killeth, the spirit should give life.

Gerson, the most eminent theologian of his age and the coryphæus of the party that opposed the transalpine principles, was deeply concerned in this atrocious business. Crevier, p. 432.

against the despotism of Rome. In this resistance England was not only the first engaged, but the most consistent; her free parliament preventing, as far as the times permitted, that wavering policy to which a court is liable. We have already seen, that a foundation was laid in the statute of provisors under Edward III. In the next reign, many other measures tending to repress the interference of Rome were adopted; especially the great statute of præmunire, which subjects all persons bringing papal bulls for translation of bishops and other enumerated purposes into the kingdom to the penalties of forfeiture and perpetual imprisonment (1). This act received, and probably was designed to receive, a larger interpretation than its language appears to warrant. Combined with the statute of provisors, it put a stop to the pope's usurpation of patronage, which had impoverished the church and kingdom of England for nearly two centuries. Several attempts were made to overthrow these enactments; the first parliament of Henry IV. gave a very large power to the king over the statute of provisors, enabling him even to annul it at his pleasure (2). This however does not appear in the statute book. Henry indeed, like his predecessors, exercised rather largely his prerogative of dispensing with the law against papal provisions; a prerogative which, as to this point, was itself taken away by an act of his own, and another of his son Henry V. (3). But the statute always stood unrepealed; and it is a satisfactory proof of the ecclesiastical supremacy of the legislature, that in the concordat made by Martin V. at the council of Constance with the English nation, we find no mention of reservation of benefices, of annates, and the other principal grievances of that age (4); our ancestors disdaining to accept by compromise with the pope any modification or even confirmation of their statute law. They had already restrained another flagrant abuse, the increase of first-fruits by Boniface IX.; an act of Henry IV. forbidding any greater sum to be paid on that account than had been formerly accustomed (5).

Influence of Wicliffe's tenets.

It will appear evident to every person acquainted with the contemporary historians, and the proceedings of parliament, that besides partaking in the general resentment of Europe against the papal court, England was under the influence of a peculiar hostility to the clergy, arising from the dissemination of the principles of Wicliffe (6). All ecclesiastical possessions were marked for spoliation by the system of this reformer; and the house of commons more than once endeavoured to carry it into effect,

(1) 16 Ric. II. c. 5.

(2) Rot. Parl. vol. iii. p. 428.

(3) 7 H. IV. c. 8.; 3 H. V. c. 4. Martin V. published an angry bull against the "execrable statute" of præmunire; enjoining Archbishop Chicheley to procure its repeal. Collier, p. 653. Chicheley did all in his power; but the commons were always inexorable on this head, p. 636. : and the archbishop even incurred Martin's resentment by it. Wilkins, Concilia, t. iii. p. 483.

(4) Lenfant, t. ii. p. 444.

(5) 6 H. IV. c. 1.

(6) See, among many other passages, the articles exhibited by the Lollards to parliament against the clergy in 1394. Collier gives the substance of them, and they are noticed by Henry: but they are at full length in Wilkins, t. iii. p. 221.

pressing Henry IV. to seize the temporalities of the church for public exigencies (1). This recommendation, besides its injustice, was not likely to move Henry, whose policy had been to sustain the prelacy against their new adversaries. Ecclesiastical jurisdiction was kept in better controul than formerly by the judges of common law, who, through rather a strained construction of the statute of præmunire, extended its penalties to the spiritual courts, when they transgressed their limits (2). The privilege of clergy in criminal cases still remained; but it was acknowledged not to comprehend high treason (3).

Germany, as well as England, was disappointed of her hopes of general reformation by the Italian party at Constance; but she did not supply the want of the council's decrees with sufficient decision.

Concordats of Aschaffenburg.

A concordat with Martin V. left the pope in possession of too great a part of his recent usurpations (4). This however was repugnant to the spirit of Germany, which called for a more thorough reform with all the national roughness and honesty. The diet of Mentz during the continuance of the council of Basle adopted all those regulations hostile to the papal interests which occasioned the deadly quarrel between that assembly and the court of Rome (5). But the German empire was betrayed by Frederic III., and deceived by an accomplished but profligate statesman, his secretary Æneas Sylvius. Fresh concordats, settled at Aschaffenburg in 1448, nearly upon the footing of those concluded with Martin V., surrendered great part of the independence for which Germany had contended. The pope retained his annates, or at least a sort of tax in their place; and instead of reserving benefices arbitrarily, he obtained the positive right of collation during six alternate months of every year. Episcopal elections were freely restored to the chapters, except in case of translation, when the pope still continued to nominate; as he did also, if any person, canonically unfit, were presented to him for confirmation (6). Such

(1) Walsingham, p. 371. 379. Rot. Parl. 11 H. IV. vol. iii. p. 645. The remarkable circumstances detailed by Walsingham in the former passage, are not corroborated by any thing in the records. But as it is unlikely that so particular a narrative should have no foundation, Hume has plausibly conjectured that the roll has been wilfully mutilated. As this suspicion occurs in other instances, it would be desirable to ascertain, by examination of the original rolls, whether they bear any external marks of injury. The mutilators, however, if such there were, have left a great deal. The rolls of Henry IV. and V.'s parliaments are quite full of petitions against the clergy.

(2) 2 Inst. p. 121. Collier, vol. i. p. 668.

(3) 2 Inst. p. 634., where several instances of priests executed for coining and other treasons are adduced. And this may also be inferred from 25 E. III. stat. 5. c. 4.; and from 4 H. IV. c. 3. Indeed the benefit of clergy has never been taken away by statute from high treason. This renders it improbable that Chief Justice Gascoyne should, as Carte tells us, vol. ii. p. 664., have refused to try Archbishop Scrope for treason, on the ground that no one could lawfully sit in judgment on a bishop for his life. Whether he might have declined to try him a as peer, is another question. The pope excommunicated all who were concerned in Scrope's death, and it cost Henry a large sum to obtain absolution. But Boniface IX. was no arbiter of the English law. Edward IV. granted a strange charter to the clergy, not only dispensing with the statutes of præmunire, but absolutely exempting them from temporal jurisdiction in cases of treason as well as felony. Wilkins, Concilia, t. iii. p. 678. This however, being an illegal grant, took no effect, at least after his death.

(4) Lenfant, t. ii. p. 428. Schmidt, t. v. p. 131.

(5) Schmidt, t. v. p. 221. Lenfant.

(6) Schmidt, t. v. p. 250.; t. vi. p. 94. etc. He observes that there is three times as much money at present as in the fifteenth century; if therefore the annates are now felt as a burthen, what must they have been? p. 112. To this Rome would an-

is the concordat of Aschaffenburg, by which the catholic principalities of the empire have always been governed, though reluctantly acquiescing in its disadvantageous provisions. Rome, for the remainder of the fifteenth century, not satisfied with the terms she had imposed, is said to have continually encroached upon the right of election (1). But she purchased too dearly her triumph over the weakness of Frederic III., and the Hundred Grievances of Germany, presented to Adrian VI. by the diet of Nuremberg in 1522, manifested the workings of a long-treasured resentment, that had made straight the path before the Saxon reformer.

Papal encroachments on church of Castile.

I have already taken notice that the Castilian church was in the first ages of that monarchy nearly independent of Rome. But after many gradual encroachments, the code of laws promulgated by Alfonso X. had incorporated a great part of the decretals, and thus given the papal jurisprudence an authority which it no where else possessed in national tribunals (2). That richly endowed hierarchy was a tempting spoil. The popes filled up its benefices by means of expectatives and reserves with their own Italian dependents. We find the cortes of Palencia in 1388 complaining that strangers are beneficed in Castile, through which the churches are ill supplied, and native scholars cannot be provided, and requesting the king to take such measures in relation to this as the kings of France, Aragon, and Navarre, who do not permit any but natives to hold benefices in their kingdoms. The king answered to this petition that he would use his endeavours to that end (3). And this is expressed with greater warmth by a cortes of 1475, who declare it to be the custom of all Christian nations that foreigners should not be promoted to benefices, urging the discouragement of native learning, the decay of charity, the bad performance of religious rites, and other evils arising from the non-residence of beneficed priests, and request the king to notify to the court of Rome, that no expectative or provision in favour of foreigners can be received in future (4). This petition seems to have passed into a law; but I am ignorant of the consequences. Spain certainly took an active part in restraining the abuses of pontifical authority at the councils of Constance and Basle; to which I might add the name of Trent, if that assembly were not beyond my province.

Checks on papal authority in France.

France, dissatisfied with the abortive termination of her exertions during the schism, rejected the concordat offered by Martin V., which held out but a promise of

swer; if the annates were but sufficient for the pope's maintenance at that time, what must they be now?

(1) Schmidt, p. 98. Æneas Sylvius, Epist. 369. and 371.; and De Moribus Germanorum, p. 1041. 1061. Several little disputes with the pope indicate the spirit that was fermenting in Germany throughout the fifteenth century. But this is the proper subject of a more detailed ecclesiastical history, and should form an introduction to that of the Reformation.

(2) Marina, Ensayo Historico-Critico, c. 329. etc.

(3) Id. Teoria de las Cortes, t. iii. p. 126.

(4) Id. t. ii. p. 374. Mariana. Hist. Hispan. l. xix. c. 1.

imperfect reformation (1). She suffered in consequence the papal exactions for some years, till the decrees of the council of Basle prompted her to more vigorous efforts for independence, and Charles VII. enacted the famous Pragmatic Sanction of Bourges (2). This has been deemed a sort of Magna Charta of the Gallican church; for though the law was speedily abrogated, its principle has remained fixed as the basis of ecclesiastical liberties. By the Pragmatic Sanction a general council was declared superior to the pope; elections of bishops were made free from all controul; mandats or grants in expectancy, and reservations of benefices were taken away; first-fruits were abolished. This defalcation of wealth, which had now become dearer than power, could not be patiently borne at Rome. Pius II., the same Æneas Sylvius who had sold himself to oppose the council of Basle, in whose service he had been originally distinguished, used every endeavour to procure the repeal of this ordinance. With Charles VII. he had no success; but Louis XI., partly out of blind hatred to his father's memory, partly from a delusive expectation that the pope would support the Angevin faction in Naples, repealed the Pragmatic Sanction (3). This may be added to other proofs, that Louis XI., even according to the measures of worldly wisdom, was not a wise politician. His people judged from better feelings; the parliament of Paris constantly refused to enregister the revocation of that favourite law, and it continued in many respects to be acted upon until the reign of Francis I. (4). At the States General of Tours, in 1484, the inferior clergy, seconded by the two other orders, earnestly requested that the Pragmatic Sanction might be confirmed; but the prelates were timid or corrupt, and the regent Anne was unwilling to risk a quarrel with the Holy See (5). This unsettled state continued, the Pragmatic Sanction neither quite enforced nor quite repealed, till Francis I., having accommodated the differences of his predecessor with Rome, agreed upon a final concordat with Leo X., the treaty that subsisted for almost three centuries between the papacy and the kingdom of France (6). Instead of capitular election or papal provision, a new method was devised for filling the vacancies of episcopal sees. The king was to nominate a fit person, whom the pope was to collate. The one obtained an essential patronage, the other preserved his theoretical supremacy. Annates were restored to the pope; a concession of great importance. He gave up his indefinite prerogative of reserving benefices, and received only a small stipulated patronage. This convention met with strenuous opposi-

(1) Villaret, t. xv. p. 126.

(2) Idem, p. 263. Hist. du Droit Public Ecclesiast. Français, t. ii. p. 234. Fleury, Institutions au Droit. Crevier. t. iv. p. 100. Pasquier, Recherches de la France, l. iii. c. 27.

(3) Villaret, and Garnier, t. xvi. Crevier, t. iv. p. 236. 274.

(4) Garnier, t. xvi. p. 432.; t. xvii. p. 222. et alibi. Crevier, t. iv. p. 318. et alibi.

(5) Garnier, t. xix. p. 216. and 321.

(6) Garnier, t. xxiii. p. 151. Hist. du Droit Public Ecclés. Fr. t. ii. p. 243. Fleury, Institutions au Droit, t. i. p. 107.

tion in France; the parliament of Paris yielded only to force; the university hardly stopped short of sedition; the zealous Gallicans have ever since deplored it, as a fatal wound to their liberties. There is much exaggeration in this, as far as the relation of the Gallican church to Rome is concerned; but the royal nomination to bishoprics impaired of course the independence of the hierarchy. Whether this prerogative of the crown were upon the whole beneficial to France, is a problem that I cannot affect to solve; in this country there seems little doubt, that capitular elections, which the statute of Henry VIII. had reduced to a name, would long since have degenerated into the corruption of close boroughs; but the circumstances of the Gallican establishment may not have been entirely similar, and the question opens a variety of considerations, that do not belong to my present subject.

Liberties of the Gallican church.

From the principles established during the schism, and in the Pragmatic Sanction of Bourges, arose the far-famed liberties of the Gallican church, which honourably distinguished her from other members of the Roman communion. These have been referred by French writers to a much earlier era; but except so far as that country participated in the ancient ecclesiastical independence of all Europe, before the papal encroachments had subverted it, I do not see that they can be properly traced above the fifteenth century. Nor had they acquired, even at the expiration of that age, the precision and consistency which was given in later times by the constant spirit of the parliaments and universities, as well as by the best ecclesiastical authors, with little assistance from the crown, which, except in a few periods of disagreement with Rome, has rather been disposed to restrain the more zealous Gallicans. These liberties therefore do not strictly fall within my limits; and it will be sufficient to observe, that they depended upon two maxims; one, that the pope does not possess any direct or indirect temporal authority; the other, that his spiritual jurisdiction can only be exercised in conformity with such parts of the canon law as are received by the kingdom of France. Hence the Gallican church rejected a great part of the Sext and Clementines, and paid little regard to modern papal bulls, which in fact obtained validity only by the king's approbation (1).

Ecclesiastical jurisdiction restrained.

The pontifical usurpations which were thus restrained, affected, at least in their direct operation, rather the church than the state; and temporal governments would only have been half emancipated, if their national hierarchies had preserved their enormous jurisdiction (2). England, in this also,

(1) Fleury, Institutions au Droit, t. ii. p. 226, etc., and Discours sur les Libertés de l'Église Gallicane. The last editors of this dissertation go far beyond Fleury, and perhaps reach the utmost point in limiting the papal authority which a sincere member of that communion can attain. See notes, p. 417 and 448.

(2) It ought always to be remembered, that *ecclesiastical*, and not merely *papal*, encroachments are what civil governments and the laity in general have had to resist; a point, which some very zealous opposers of Rome have been willing to keep out of sight. The latter arose out of the former, and perhaps were in some respects less ob-

began the work, and had made a considerable progress, while the mistaken piety or policy of Louis XI. and his successors had laid France open to vast encroachments. The first method adopted in order to check them was rude enough; by seizing the bishop's effects when he exceeded his jurisdiction (1). This jurisdiction, according to the construction of churchmen, became perpetually larger: even the reforming council of Constance give an enumeration of ecclesiastical causes far beyond the limits acknowledged in England, or perhaps in France (2). But the parliament of Paris, instituted in 1304, gradually established a paramount authority over ecclesiastical as well as civil tribunals. Their progress was indeed very slow. At a famous assembly in 1329 before Philip of Valois, his advocate-general, Peter de Cugnieres, pronounced a long harangue against the excesses of spiritual jurisdiction. This is a curious illustration of that branch of legal and ecclesiastical history. It was answered at large by some bishops, and the king did not venture to take any active measures at that time (3). Several regulations were however made in the fourteenth century, which took away the ecclesiastical cognizance of adultery, of the execution of testaments, and other causes which had been claimed by the clergy (4). Their immunity in criminal matters was straitened by the introduction of privileged cases, to which it did not extend; such as treason, murder, robbery, and other heinous offences (5). The parliament began to exercise a judicial controul over episcopal courts. It was not however till the beginning of the sixteenth century, according to the best writers, that it divised its famous form of procedure, the appeal because of abuse (6). This, in the course of time, and through the decline of ecclesiastical power, not only proved an effectual barrier against encroachments of spiritual jurisdiction, but drew back again to the lay court the greater part of those causes which by prescription, and indeed by law, had appertained to a different cognizance. Thus, testamentary, and even, in a great degree, matrimonial causes were decided by the parliament; and in many other matters,

jectionable. But the true enemy is what are called High-church principles, be they maintained by a pope, a bishop, or a presbyter. Thus Archbishop Stratford writes, to Edward III.: Duo sunt, quibus principaliter regitur mundus, sacra pontificalis auctoritas, et regalis ordinata potestas: in quibus est pondus tantò gravius et sublimius sacerdotum, quantò et de regibus filii in divino reddituri sunt examine rationem; et ideò scire debet regia celsitudo ex illorum vos dependere judicio, non illos ad vestram dirigi posse voluptatem. Wilkins, Concilia, t. ii. p. 663. This amazing impudence towards such a prince as Edward did not succeed; but it is interesting to follow the track of the star which was now rather receding, though still fierce.

(1) De Marca, De Concordantiâ, l. iv. c. 18.

(2) Id. c. 18. Lenfant, Conc. de Constance, t. ii. p. 331. De Marca, l. iv. c. 15., gives us passages from one Durandus about 1309, complaining that the lay judges invaded ecclesiastical jurisdiction, and reckoning the cases subject to the latter, under which he includes feudal and criminal causes in some circumstances, and also those in which the temporal judges are in doubt; si quid ambiguum inter judices sæculares oriatur.

(3) Velly, t. viii. p. 234. Fleury, Institutions, t. ii. p. 12. Hist. du Droit Eccléś. Franç. t. ii. p. 88.

(4) Villaret, t. xi. p. 182.

(5) Fleury, Institutions au Droit, t. ii. p. 128. In the famous case of Balue, a bishop and cardinal, whom Louis XI. detected in a treasonable intrigue, it was contended by the king that he had a right to punish him capitally. Du Clos, Vie de Louis XI. t. i. p. 422. Garnier, Hist. de France, t. xvii. p. 320. Balue was confined for many years in a small iron cage, which till lately was shewn in the castle of Loches.

(6) Pasquier, l. iii. c. 33. Hist. du Droit Eccléś. Français, t. ii. p. 119. Fleury, Institutions au Droit Eccléś. Français, t. ii. p. 221. De Marca De Concordantiâ Sacerdotii et Imperii, l. iv. c. 19. The last author seems to carry it rather higher.

that body, being the judge of its own competence, narrowed, by means of the appeal because of abuse, the boundaries of the opposite jurisdiction (1). This remedial process appears to have been more extensively applied than our English writ of prohibition. The latter merely restrains the interference of the ecclesiastical courts in matters which the law has not committed to them. But the parliament of Paris considered itself, I apprehend, as conservator of the liberties and discipline of the Gallican church; and interposed the appeal because of abuse whenever the spiritual court, even in its proper province, transgressed the canonical rules by which it ought to be governed (2).

Decline of papal influence in Italy.

While the bishops of Rome were losing their general influence over Europe, they did not gain more estimation in Italy. It is indeed a problem of some difficulty, whether they derived any substantial advantage from their temporal principality. For the last three centuries, it has certainly been conducive to the maintenance of their spiritual supremacy which, in the complicated relations of policy, might have been endangered by their becoming the subjects of any particular sovereign. But I doubt whether their real authority over Christendom in the middle ages was not better preserved by a state of nominal dependence upon the empire, without much effective control on one side, or many temptations to worldly ambition on the other. That covetousness of temporal sway which, having long prompted their measures of usurpation and forgery, seemed from the time of Innocent III. and Nicholas III., to reap its gratification, impaired the more essential parts of the papal authority. In the fourteenth and fifteenth centuries, the popes degraded their character by too much anxiety about the politics of Italy. The veil woven by religious awe was rent asunder, and the features of ordinary ambition appeared without disguise. For it was no longer that magnificent and original system of spiritual power, which made Gregory VII., even in exile, a rival of the emperor; which held forth redress where the law could not protect, and punishment where it could not chastise; which fell in sometimes with superstitious feeling, sometimes with political interest. Many might believe that the pope could depose a schismatic prince, who were disgusted at his attacking an unoffending neighbour. As the cupidity of the clergy in regard to worldly estate had lowered their character every where, so the similar conduct of their head undermined the respect felt for him in Italy. The censures of the church, those excommunications and interdicts, which had made Europe tremble, became gradually despicable as well as odious, when they were lavished in every squabble for territory which the

(1) Fleury, Institutions, t. ii. p. 42. etc.

(2) De Marca, De Concordantiâ, l. iv. c. 9. Fleury, t. ii. p. 224. In Spain even now, says De Marca, bishops or clerks not obeying royal mandates that inhibit the excesses of ecclesiastical courts, are expelled from the kingdom and deprived of the rights of denizenship.

pope was pleased to make his own (1). Even the crusades, which had already been tried against the heretics of Languedoc, were now preached against all who espoused a different party from the Roman see in the quarrels of Italy. Such were those directed at Frederic II., at Manfred, and at Matteo Visconti, accompanied by the usual bribery, indulgences, and remission of sins. The papal interdicts of the fourteenth century wore a different complexion from those of former times. Though tremendous to the imagination, they had hitherto been confined to spiritual effects, or to such as were connected with religion, as the prohibition of marriage and sepulture. But Clement V., on account of an attack made by the Venetians upon Ferrara in 1309, proclaimed the whole people infamous, and incapable for three generations of any office; their goods, in every part of the world, subject to confiscation, and every Venetian, wherever he might be found, liable to be reduced into slavery (2). A bull in the same terms was published by Gregory XI. in 1376 against the Florentines.

From the termination of the schism, as the popes found their ambition thwarted beyond the Alps, it was diverted more and more towards schemes of temporal sovereignty. In these we do not perceive that consistent policy, which remarkably actuated their conduct as supreme heads of the church. Men generally advanced in years, and born of noble Italian families, made the papacy subservient to the elevation of their kindred, or to the interests of a local faction. For such ends they mingled in the dark conspiracies of that bad age, distinguished only by the more scandalous turpitude of their vices from the petty tyrants and intriguers with whom they were engaged. In the latter part of the fifteenth century, when all favourable prejudices were worn away, those who occupied the most conspicuous station in Europe disgraced their name by more notorious profligacy, than could be paralleled in the darkest age that had preceded; and at the moment beyond which this work is not carried, the invasion of Italy by Charles VIII., I must leave the pontifical throne in the possession of Alexander VI.

It has been my object in the present chapter to bring within the compass of a few hours' perusal the substance of a great and interesting branch of history; not certainly with such extensive reach of learning as the subject might require, but from sources of unquestioned credibility. Unconscious of any partialities, that could give an oblique bias to my mind, I have not been very solicitous to avoid offence where offence is so easily taken. Yet there is one misinterpretation of my meaning which I would gladly obviate.

(1) In 1290, Pisa was put under an interdict for having conferred the signiory on the count of Montefeltro, and he was ordered, on pain of excommunication, to lay down the government within a month. Muratori ad ann. A curious style for the pope to adopt towards a free city! Six years before the Venetians had been interdicted, because they would not allow their gallies to be hired by the king of Naples. But it would be almost endless to quote every instance.

(2) Muratori.

I have not designed, in exhibiting without disguise the usurpations of Rome during the middle ages, to furnish materials for unjust prejudice or unfounded distrust. It is an advantageous circumstance for the philosophical inquirer into the history of ecclesiastical dominion, that, as it spreads itself over the vast extent of fifteen centuries, the dependence of events upon general causes, rather than on transitory combinations or the characters of individuals, is made more evident, and the future more probably foretold from a consideration of the past, than we are apt to find in political history. Five centuries have now elapsed, during every one of which the authority of the Roman see has successively declined. Slowly and silently receding from their claims to temporal power, the pontiffs hardly protect their dilapidated citadel from the revolutionary concussions of modern times, the rapacity of governments, and the growing averseness to ecclesiastical influence. But if thus bearded by unmannerly and threatening innovation, they should occasionally forget that cautious policy which necessity has prescribed, if they should attempt, an unavailing expedient! to revive institutions which can be no longer operative, or principles that have died away, their defensive efforts will not be unnatural, nor ought to excite either indignation or alarm. A calm, comprehensive study of ecclesiastical history, not in such scraps and fragments as the ordinary partizans of our ephemeral literature obtrude upon us, is perhaps the best antidote to extravagant apprehensions. Those who know what Rome has once been are best able to appreciate what she is; those who have seen the thunderbolt in the hands of the Gregories and Innocents, will hardly be intimidated at the sallies of decrepitude, the impotent dart of Priam amidst the crackling ruins of Troy.

END OF THE FIRST VOLUME.

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